

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO. 81 OF 2013

BENARD MOKAYA MOSE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. A.C.A Onginjo – CM

dated 14th November 2012 at the Chief Magistrate’s Court

at Kisii in Criminal Case No. 1949 of 2012)

JUDGMENT

1. The appellant, BENARD MOKAYA MOSE, pleaded guilty to the offence of causing an indecent act contrary to section 11(1) of the Sexual Offences Act (“the Act”). The particulars of the charge were 12th November 2012 in Kisii Central District of Kisii County, he committed an indecent act with CM, by rubbing his penis against the buttocks of CM. He was sentenced to 15 years imprisonment.

2. The minimum sentence under section 11(1) of the Act is 10 years imprisonment. In the sentencing notes the trial magistrate did not give any reason why it was enhanced to 15 years imprisonment hence I find that the trial court did not exercise its discretion based on any factors that would aggravate the minimum sentence.

3. As the appellant only contests the sentence, I allow the appeal and reduce the sentence to 10 years imprisonment from the date of the sentence that is 14th November 2012.

Dated and delivered at Kisii this 2nd day of August 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.