



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 4 OF 2018

NELSON KIRUI CHERUIYOT.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in CR. Case No. 32 of 2016 Bomet PM's Court – Hon Kiage – RM)

JUDGMENT

The appellant was convicted and sentenced to 10 years imprisonment for the alternative count of indecent acts with a child contrary to Section 11 (1) of the Sexual Offences Act.

His appeal is on sentence. He has listed the following grounds:-

1. That the appellant is a disabled prisoner having an amputated right leg.
2. That he is unable to support himself.
3. That he is a first offender
4. That he is an orphan
5. Prays for leniency.

The appellant had been charged with the offence of defilement C/S 8(1) as read with S.8(2) of the Sexual Offences Act No. 3 of 2006. He was acquitted of the substantive charge ostensibly because penetration was said not to have been proved according to the medical evidence adduced.

S.11(1) of the Sexual offences Act provides for imprisonment term of not less than ten years.

The appellant was sentenced to ten years imprisonment which is the minimum term provided for in law. In his petition of appeal the appellant prays for the term of ten years to be reduced to a lesser one.

He has not challenged the conviction.

The court finds that the sentence of ten years for the offence of indecent act C/S 11(1) of the Sexual Offences Act is the minimum one, it was not harsh or excessive in the circumstances of this case.

The appeal has no merit and its disallowed. Both conviction and sentence are upheld.

Judgment delivered dated and signed in open court this 27th day of October 2018 in the presence of learned counsel for the prosecution Mr. Barasa, the appellant in person present. Court Assistant

M. MUYA

JUDGE

