

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 385 OF 2015
ALBERT MWANGI KURIA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(Appeal against sentence in Criminal case number 385 of 2015, R vs. Albert Mwangi Kuria at Othaya Law Courts on 4.8.2015 by Hon. B.M. Ekhubi).

JUDGEMENT

The appellant in this case pleaded guilty to the offence of committing an indecent act with a child contrary to Section **11 (1)** of the Sexual Offences Act[1] and was convicted on his own plea of guilty and sentence to ten years imprisonment.

On 7th July 2015, the charges were read to the appellant and he answered “*it is true.*” The learned Magistrate entered a plea of not guilty and then warned the accused of the repercussions of admitting the offence *vis-avis* the heftiness of the sanction. whereupon the prosecutor applied for the matter to be mentioned on 8th July 2015 for facts.

The facts were read to the accused on 8th July 2015 and he answered “*The facts are true.*”The court asked the accused how old he was and he said he was 17 years. The prosecutor applied for a age assessment report which was submitted on 28th July 2015 confirming that the accused had attained the age of majority and that his child birth card shows he was born on 5 July 1997, indicating that he turned 18 years on the mid-night of the same day he is alleged to have committed the offence.

The trial Magistrate sentenced him to serve **ten years imprisonment**, the minimum sentence prescribed under the law for an offence of this nature.

The appellant in his appeal seeks for the sentence to be reduced, a position he reiterated when the matter came up before me.

It is important at this stage to recall the provisions of Section **348** of the Criminal Procedure Code which provides as follows:-

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”

The law only permits him to appeal against the extent or legality of the sentence. As pointed out, the sentence of 10 years imprisonment is the minimum sentence prescribed under the law and it is legal.

I note that the sentence imposed is the minimum allowed by the law and accordingly I find I cannot interfere with the sentence. The effect is that this appeal is dismissed.

Dated at Nairobi this 23rd day of March 2016

John M. Mativo

Judge

[\[1\]](#)Act No. 3 of 2006