



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL APPEAL NO.03 OF 2015

ABDI HASAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No.186 of 2010 of the Principal Magistrate's Court at Marsabit by S.O Mogute – Senior Resident Magistrate)

JUDGMENT

The appellant, **ABDI HASSAN**, was Charged with an Offence of indecent act with a child contrary to section 11 (1) of the Sexual Offences Act No.3 of 2006.

The particulars of the offence were that on 18th October 2010 in Marsabit District within Eastern Province, the appellant knowingly and intentionally touched the vagina of **D.W.W**, a girl child aged five years. The appellant pleaded guilty to this charge and was convicted and sentenced to serve 10 years imprisonment. He now appeals against both conviction and sentence.

The appellant raised three grounds of appeal as follows:

1. That the trial magistrate erred in law and facts by failing to make a finding that he was not taken for medical examination.
2. That the prosecution case was not proved beyond any reasonable doubts.
3. That his defence was not considered.

The state opposed the appeal and was represented by Mr. Motende, the learned counsel. He contended that the appeal offends 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”

When the appellant was taken to court for plea on 26.10 2010, he pleaded not guilty and the matter was fixed for hearing. On 18.11.2010 when he was taken to court for hearing, he pleaded guilty to the alternative charge. He was convicted and sentenced. His grounds of appeal cannot therefore stand. Once a plea of guilty has been entered, the prosecution will not be required to call evidence. To consider these grounds will be tantamount to offending the provisions of section 348 of the Criminal Procedure Code.

The only issue I will interrogate is whether the sentence meted out is legal or not.

The Sexual Offences Act, section 11(1) provides as follows:

"(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years."

The age of the victim is indicated on the P3 form as five years. The minimum sentence provided under this section is that of not **"less than ten years imprisonment."** He was therefore given the bare minimum sentence provided by the law. I cannot therefore disturb the sentence for doing so will be illegal.

The upshot of the foregoing is that the appeal of the appellant must fail. He will serve the sentence meted out by the learned trial magistrate.

DATED at Marsabit 16th day of June 2016

KIARIE WAWERU KIARIE

JUDGE