



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO. 84 OF 2015
JADIEL KIRIMI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No.425 of 2011 of the Senior Resident Magistrate's Court at Tigania by B. Ochieng – Senior Principal Magistrate)

JUDGMENT

The appellant, **JADIEL KIRIMI**, was convicted for the offence of attempted defilement of a girl contrary to section 9 (1) (2) (sic) of the Sexual Offences Act No.3 of 2006.

The particulars of the offence were that on the 9th day of December 2010 at [particulars withheld] in Tigania East District of Meru county, the appellant intentionally attempted to cause his penis to penetrate the vagina of **E.K.N** a child aged 14 years.

The appellant was tried and was convicted of the offence. He was sentenced to serve ten years imprisonment. He now appeals against the sentence.

The appellant was in person. In what he calls mitigation grounds of appeal, he contends that he is now remorseful.

The state opposed the appeal and was represented by Mr. Odhiambo, the learned counsel, who contended that the appellant was sentenced to the minimum sentence prescribed by the law.

The charge in the substantive charge was wrongly drafted. It ought to read:

"...contrary to section 9(1) as read with section 9 (2)..."

The appellant was not prejudiced in any way for it is clear from the proceedings that he understood the charge and he fully participated in the trial. This is curable under section 382 of the Criminal Procedure Code.

Section 9(2) of the Sexual Offences Act provides as follows:

A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.

A child is defined in the act as:

“child” has the meaning assigned thereto in the Children Act (Cap. 141);

The Children Act, Cap. 141 Laws of Kenya defines a child as follows:

“child” means any human being under the age of eighteen years;

The complainant in this case was aged 14 years. She was therefore a child. This means the minimum sentence for the offence is ten years imprisonment. this is what the learned trial magistrate meted out. This is the only available legal sentence.

From the foregoing therefore, the appeal by the appellant must fail. The same is dismissed.

DATED at Meru 19th day of December 2016

KIARIE WAWERU KIARIE

JUDGE