

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.256 OF 2010

(An Appeal arising out of the conviction and sentence of Hon. C. Kabucho (Mrs.) - SRM delivered on 29th October 2009 in Kiambu CM. CR. Case No.527 of 2009)

JOHN NJUGUNA WARUI.....
APPELLANT

VERSUS

REPUBLIC.....RESPOND
ENT

JUDGMENT

The Appellant, John Njuguna Warui was charged with the offence of **defilement of a child** contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act**. The particulars of the offence were that on 17th April 2009 at *[particulars withheld]* Village in Kiambu County, the Appellant intentionally and unlawfully committed an act which caused penetration with his genital organ (penis) into the female genital organ (vagina) of J M (the complainant), a girl aged two (2) years. He was alternatively charged with **committing an indecent act with a child** contrary to **Section 11(1)** of the **Sexual Offences Act**. The particulars of the offence were that on the same day and in the same place, the Appellant unlawfully and indecently assaulted the complainant by touching her private parts (vagina). When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, the Appellant was convicted of the alternative count of **indecent assault**. He was sentenced to serve ten (10) years imprisonment.

Although the Appellant was aggrieved by his conviction and sentence, during the hearing of the appeal, he abandoned his appeal on conviction. He instead pleaded with the court for a reduction of sentence. He told the court that during the period of his incarceration, he had learnt his lesson. He had learnt a trade. He was now skilled in carpentry. He was emphatic that if the court reduced his sentence, he would not re-offend when released. He stated that he committed the offence due to the fact that he was in a bad environment and in bad company. He was of the view that he was ready to be integrated into the society. He produced a letter written by the officer in-charge of the prison where he is currently serving his sentence which vouches for his good behaviour while in prison. He pleads with the court to exercise leniency on him and reduce the sentence that was imposed on him. Ms. Atina for the State opposed the plea for reduction of sentence. She submitted that the Appellant was sentenced to serve the minimum sentence. The offence he had committed was heinous. She was of the view that taking into account the circumstances of the case, the sentence meted by the trial magistrate was reasonable. She urged the court to confirm the sentence.

The Appellant is not challenging his conviction. He is appealing against sentence. When the trial court sentenced the Appellant to serve the custodial sentence, it was exercising judicial discretion. As an appellate court, this court will only interfere with such exercise of judicial discretion if it is established that the sentence was manifestly harsh and excessive or was so lenient as to amount to a miscarriage of justice. This court will interfere with the sentence if it is established that the sentence was unlawful. In the present appeal, the Appellant urged the court to interfere with the custodial sentence that was imposed on

him by the trial court. He pleaded with the court to exercise leniency on him. He told the court that he had learnt his lesson and should be allowed to be integrated back to society. On the other hand, the State urged the court to confirm the sentence that was imposed by the trial court because it was reasonable and was appropriate to the crime that was committed by the Appellant.

This court has carefully considered the plea for reduction of sentence made by the Appellant. It has also re-evaluated the facts of the case. The Appellant was convicted for committing an **indecent act with a child** contrary to **Section 11(1)** of the **Sexual Offences Act**. Under that section, a person convicted of committing such offence is liable to ***“imprisonment for a term of not less than ten years”***. In the present appeal, the Appellant was sentenced to serve ten (10) years imprisonment. It was the minimum sentence provided by the law. The sentence was legal. Although the Appellant placed evidence on record that indeed he had learnt his lesson and was on the path to rehabilitation, taking into account the offence that the Appellant committed, this court is of the considered view that the sentence that was imposed on the Appellant fitted the crime.

In the premises therefore, his appeal lacks merit and is hereby dismissed. He shall serve the sentence imposed by the trial court.

DATED AT NAIROBI THIS 19TH DAY OF MARCH 2015

L. KIMARU

JUDGE