



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL APPEAL NO. 111 OF 2010**

**AMOS MUTIGA SARISO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal against sentence in Criminal Revision No. 39 of 2010 (Hon. Mr. Justice Serгон) in a ruling delivered on 7<sup>th</sup> May, 2010)**

**JUDGMENT**

The appellant was charged and convicted of the offence of attempted defilement contrary to **section 9(1)** of the **Sexual Offences Act No.3 of 2006**. The appellant was then sentenced to serve one year in prison.

The minimum sentence provided for any person convicted under **section 9(1)** of the **Sexual Offences Act** is ten years imprisonment; this sentence is prescribed in **section 9(2)** of the same Act which states:-

***(2) 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.***

Since the sentence meted out by the trial court was evidently illegal, the record of the proceedings in that court were forwarded to this court pursuant to **section 363(2)** of the **Criminal Procedure Code** for the court to satisfy itself of the legality, correctness or otherwise the propriety of any finding or sentence passed and also as to the regularity of the proceedings.

In exercise of its revisionary powers under **section 364** of the **Criminal Procedure Code** the court reversed the sentence against the appellant and substituted it with the minimum sentence prescribed for the kind of offence for which the appellant was convicted; he was sentenced to ten years imprisonment in place of the one year which he had been given.

In the Petition of Appeal which was filed in court on 18<sup>th</sup> May, 2010, the appellant faulted the learned judge's decision to substitute the sentence which the subordinate court had handed him on several grounds which, for reason I will state in due course, I find it unnecessary or futile to delve into.

At the hearing of his appeal the appellant insisted that he was only challenging the sentence and not the conviction and thus there is no doubt that he was challenging the decision of this court in exercise of its revisionary powers. In any event, his appeal was filed more than seven months after the trial court's judgment was delivered and therefore he could only have been appealing against the decision of this court which had been delivered ten days before.

Appeals against the decisions of this court cannot be lodged or heard by the same court; if the appellant was dissatisfied with the decision of this court to substitute the sentence of one year with that of ten years or if he was, for any other reason dissatisfied with this court's exercise of its powers under **section 364** of the **Criminal Procedure Code**, then the proper forum to ventilate his grievances would have been the Court of Appeal. This Court cannot exercise its appellate jurisdiction over its own decisions; **section 379** of the **Criminal Procedure Code** is clear that appeals from the High Court lie in the Court of Appeal. It is for this reason that I see no reason to set out the grounds against which the appellant is appealing and it is for the same reason that I dismiss the appellants appeal; as a matter of law it ought to have been

summarily rejected.

**Signed, dated and delivered in open court this 24<sup>th</sup> day of April, 2015**

Ngaah Jairus

**JUDGE**