



**REPUBLIC OF KENYA.**

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

**CRIMINAL APPEAL NO. 67 OF 2013.**

**JACKSON MWIGA WAMBUGU ::::::::::::::::::::::::::::::::::::::: APPELLANT.**

**VERSUS**

**REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT.**

***(Being an appeal from the original conviction and sentence of Hon. M.W. Murage – SRM in Criminal Case No. 65/2013 delivered on 16<sup>th</sup> May, 2013 at Mukurweini)***

**J U D G M E N T.**

1. The appellant was charged with the offence of attempted defilement contrary to section 9 (1) (2) of the Sexual Offences Act. The particulars of the charge were that on the 14<sup>th</sup> day of February, 2013 in Mukurweini district within Nyeri County, intentionally attempted to cause his penis to penetrate the anus of a child aged 11 years.
2. The case proceeded to full hearing after which the learned trial magistrate found the appellant guilty of the offence and sentenced him to serve 10 years imprisonment. At the time of the hearing of this appeal, the appellant abandoned his appeal against conviction and only pursued his appeal against sentence. This being the case, the evidence adduced at the lower court remains uncontroverted and stands without blemish.
3. This court finds that there was a minor error in the way the charge was framed. I therefore invoke the provisions of section 382 of the Criminal Procedure Code to cure the error on the charge which should read that the appellant was charged with the offence of defilement contrary to section 9 (1) as read with section 9 (2) of the Sexual Offences Act, instead of the offence of defilement contrary to section 9 (1) (2) of the said Act. The court notes that the appellant was not prejudiced in any way by the way the charge was framed and the error which is minor in nature, did not go to the substance of the charge.
4. The sentence of 10 years imprisonment imposed upon the appellant is the minimum sentence provided by law. The court cannot therefore interfere with the said sentence. The appeal is therefore dismissed.

**DATED and SIGNED at KAKAMEGA on this 15<sup>th</sup> day of October 2015.**

**NJOKI MWANGI.**

**JUDGE.**

**DELIVERED, DATED and SIGNED at NYERI on this 26<sup>th</sup> day of October 2015.**

**J. MATIVO.**

**JUDGE.**

**In the presence of:-**

..... Appellant.

..... Respondent.

..... Court Assistant.