



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 267 OF 2014**

**EZEKIEL NJOROGE JAMES.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The appellant herein **Ezekiel Njoroge James** has filed this appeal challenging his conviction and sentence by the learned Resident Magistrate sitting at the Nakuru Law Courts. The appellant with the offence of **INDECENT ACT WITH A CHILD CONTRARY TO SECTION 11(1) OF THE SEXUAL OFFENCES ACT, 2006**. The particulars of the charge were that:-

**“On 22<sup>nd</sup> day of December 2004, at Kabatini area Bahati in Nakuru District within Rift Valley Province unlawfully and indecently assaulted M H, a girl of 11 years by touching her private parts namely vagina.”**

He faced a second charge of causing grievous harm contrary to Section 234 of the Penal Code. The appellant was arraigned in court and charges were read to him on 18/12/2008. The appellant pleaded guilty to both the charges. The matter was then placed aside for the facts to be read out. As it transpired no facts were ever read out to the appellant. The record shows at page 5 line 5 that the court merely proceeded to record mitigation from the appellant. Indeed the trial magistrate proceeded to sentence the appellant without even convicting him. This was in blatant disregard of the provisions of Section 207(2) of the Criminal Procedure Code. A sentence is premised upon a conviction for one offence or another. Where no conviction has been rendered, there exists no legal basis for a sentence.

The learned State Counsel did concede this appeal on the basis of these irregularities. As a result this appeal succeeds. The court cannot quash the appellant’s conviction as no conviction was rendered. The sentences imposed upon the appellant are hereby set aside. The appellant is to be set at liberty unless otherwise lawfully held.

Dated in Nakuru this 22<sup>nd</sup> day of October 2015.

**MAUREEN A. ODERO**

**JUDGE**