



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.194 OF 2012

JACKSON ASEMBO MULWANI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in criminal case No. 542 of 2011 in the Chief Magistrate's Court at Limuru delivered on 8/3/12 by A.R. Ireri, SRM).

JUDGMENT

The Appellant was charged with attempted defilement contrary to Section 9(1) as read with Sub Section (2) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on the 20th day of July, 2011 at [particulars withheld] Estate in Kiambu County, unlawfully and intentionally attempted to cause his penis to penetrate the vagina of J W M a child aged 9 years old.

He was convicted and sentenced to ten years imprisonment. He appealed against the sentence only and prayed for a lesser sentence on grounds that;

1. He is of old age and has complicated medical issues which cannot adequately be addressed by the prison facilities.
2. That his wife is also of old age with deteriorating health and cannot take care of household issues.
3. That he is now more spiritually and socially reformed.

His submissions were dated 25/11/2015. He stated that before his imprisonment he faced psychological issues that led to other ailments for which he needs regular medical checkups and which the prison medical department cannot address. He requested that a non-custodial sentence be granted for the remaining imprisonment term. He reiterated that while in prison he has spiritually and socially been enriched and has, as a result, adopted a different approach to life.

Counsel for Respondent Miss Atina opposed the appeal. She submitted that the Appellant was convicted of attempted defilement and was sentenced to serve 10 years imprisonment which is a mandatory penalty. She submitted that the sentence was minimum and thus lenient. She prayed that the appeal be dismissed.

Under **Section 354(3)(b) of the Criminal Procedure Code**, this court may in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence. However, the penalty for attempted defilement as provided under **Section 9(2) of the Sexual Offences Act No.3 of 2006** is mandatory. It

provides that **“a person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term not less than ten years”**. The Appellant was convicted and sentenced to serve 10 years imprisonment which is the minimum sentence. In view of the strict provision, this court is not accorded a window to vary the sentence. Although the Appellant is not a young man and may be experiencing health issues, the law is against considering the appeal in his favour. I cannot therefore disturb the finding of the learned trial magistrate. In the end, this appeal fails and the same is dismissed.

DATED and DELIVERED this **10TH** day of **DECEMBER**, 2015.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant present in person
2. Miss Atina for the Respondent.