



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 275 OF 2011**

ELIJAH MAGHANGA MZAWA ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 317 of 2009 of the Senior Resident Magistrate's Court at Wundanyi– **HON. F. MUNYI - RM**)

**JUDGMENT**

The Appellant was Convicted and Sentenced to Fifteen (15) years for the offence of attempted rape contrary to Section 4 of the Sexual Offences Act No. 3 of 2006. He pleaded guilty to the charge in Swahili language which he told the Court he understood. The facts were read to him and he stated that they were correct and he was subsequently convicted and sentenced to fifteen (15) years.

Section 4 of the Sexual Offences Act provides,

***“Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life”***

It is noted in this case that the accused/appellant had been treated as a first offender. He had attempted to have sex with the complainant, after ensuring that her husband was away at a nearby shopping centre. He had held complainant by her lesso and she managed to escape his clutches. He did not manage to proceed any further. I find the sentence of fifteen (15) years imprisonment to be harsh in the circumstances of this case.

I accordingly reduce the imprisonment term to five (5) years imprisonment. The Appellant will now serve five (5) years imprisonment.

To that extent only does this appeal succeed.

Judgment delivered dated and signed this 27<sup>th</sup> day of **February, 2014.**

.....

**M. MUYA**

**JUDGE**

**27<sup>TH</sup> FEBRUARY, 2014**

**In Open Court in the presence of:-**

Learned State Counsel Miss Fundi

The appellant present

Court clerk Musundi