205/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 65 OF 2013

IDDI HASSAN.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(Being an appeal from the original conviction and sentence in Kangundo Senior Resident Magistrate's Court Criminal Case No. 174 of 2012 by Hon I.M. Kahuya, RM on 27/8/2012)

JUDGMENT

1. The Appellant was charged with the offence of rape contrary to **Section 3**(1) (2) of the **Sexual Offences Act No.** 3 of **2006.** Particulars of the offence being that on the 4th day of **April, 2012** at ***[particulars withheld]*** **Village** in **Matungulu District** within Machakos County, intentionally and unlawfully caused his penis to penetrate the vagina and anus of **E M K** without her consent aged **32 years.**

In the alternative count the appellant was charged with the offence of indecent Act with a female contrary to **section 11(1)** of the **Sexual offences Act, No. 3** of **2006**. Particulars of the offence being that on the **4th** day of **April, 2012** at ***[particulars withheld]*** **Village** in **Matungulu District** within Machakos County, intentionally and unlawfully touched the vagina of **E M K** without her consent.

2. He was tried, convicted and sentenced to serve **ten (10 years** imprisonment. He now mitigates on sentence on grounds that:-

i. His elderly parents depend on him for sustenance.
ii. He is remorseful.
iii. He was a first offender a factor that was not taken into consideration.

3. **Mrs Abuga** for the State urged the court to uphold the sentence passed. She argued that the sentence passed was within the law.
4. I am duty bound as the first appellate court to reconsider circumstances that made the trial court arrive at a decision to mete out the sentence as it did.
5. The minimum prescribed sentence for the offence of rape is **ten (10) years imprisonment**. The sentence imposed was therefore within law. In the premises, I uphold it. The appeal stands dismissed.

DATED, SIGNED and **DELIVERED** at **MACHAKOS** this **19TH** day of **FEBRUARY 2014**

L.N. MUTENDE

JUDGE