

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 25 OF 2012.

LESIT, J

STANLEY MWAMBIA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT.

(FROM THE ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 2481 OF 2010 IN THE PRINCIPAL MAGISTRATES COURT AT MAUA)

JUDGEMENT

1. The Appellant **STANLEY MWAMBIA** was charged of attempted defilement contrary to section 9(1) of the Sexual Offences Act in count 1. In the alternative count he was charged with indecent Assault of a child contrary to section 121(1) of the Sexual Offences Act. In count 2 the Appellant was charged with Assault contrary section 251 of the Penal Code. After the trial, the Appellant was convicted in counts 1 and 2 and sentenced to 10 years and 2 years imprisonment respectively.
2. The Appellant was aggrieved by the sentence he filed this appeal in which he raises three grounds namely.

(i) That I have three (3) young children two (2) brothers and one (1) sister that all depend on me.

(ii) That my child is crippled and I am the sole provider.

(iii) My lord I feel remorseful and with all sort of humility. I do request your honourable court of appeal to either set aside the sentence or convict me on probation terms.

3. When the appeal came up for hearing the Appellant urged the court to be merciful to him as he had reformed. He said that he was trying to discipline his aunties child with a stick and that that is how the case arose.
4. The learned State Counsel Mr. Moses Mungai left the matter with the court to decide.
5. I have considered this appeal the Appellant was convicted of Attempted Defilement contrary to section 9(1) of the Penal Code. The law provides that a person convicted for this offence is liable to imprisonment for a period not less than 10 years. The Appellant was sentenced to 10 years imprisonment in this charge. That being the minimum sentence provided, this court cannot interfere with it.
6. The Appellant was sentenced to 2 years imprisonment for assault contrary to section 251 of the Penal Code. The sentence for that offence is 3 years imprisonment. Two years imprisonment was fair in the circumstances. The learned trial magistrate ordered this sentence to run concurrently with the 10 years imprisonment sentence.
7. Having considered this appeal. I find that the same has no merit. Accordingly I confirm the sentence and dismiss the appeal in total.

DATED SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE