



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO.217 OF 2009**

**HASSAN OMAR ROBA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an appeal against both conviction and sentence in Criminal Case No.49/09 in Moyale Law Courts- before C.Obulutsa)***

**J U D G M E N T**

The appellant HASSAN OMAR ROBA was charged with an offence of attempted defilement contrary to Section 9(1), (2) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge were that on 18<sup>th</sup> day of February, 2009 at around 14.00 hrs.(2.00PM) at [particulars withheld] of Moyale District within Eastern Province the appellant attempted to have carnal knowledge of S O H, a girl under the age of 8 years. The appellant faced alternative count of indecent Act with a Child, contrary to Section 11(6) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that on 18<sup>th</sup> day of February, 2009 at around 1400 hours at [particulars withheld] of Moyale District unlawfully did indecent act to S H O by touching her private parts namely breasts and vagina.

The appellant was convicted of attempted defilement and sentenced to 20 years imprisonment. Being aggrieved by the conviction and sentence he filed this appeal setting 6 grounds of appeal.

When the appeal came up for hearing the appellant abandoned his appeal against conviction and opted to proceed with his appeal against sentence. He prayed that the sentence be reduced. Mr. Ongige learned State Counsel conceded the sentence imposed upon the appellant was excessive and left the matter to the court to decide on the sentence.

Section 9(2) of the Sexual Offences Act, NO.3 of 2006 provides:-

***“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 Section provides minimum sentence of not less than 10 years and has no upper limit. Upon conviction the appellant in his mitigation sought for leniency and stated that he has 4 children.

I have considered the sentence imposed of 20 years and find it to be excessive, in view of the minimum sentence imposed for such offence. I have considered that the appellant is remorseful and has four

children.

The sentence imposed upon the appellant is reduced from 20 years to 10 years. The appellant shall serve 10 years from the date of conviction.

DATED, SIGNED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF OCTOBER, 2013.

**J. A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT IN THE PRESENCE OF**

1. Appellant present in person
2. Mr. Ongige for the State

**J. A. MAKAU**

**JUDGE**