



REPUBLIC OF KENYA
INT HE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO. 82 OF 2011

FRANKLIN KIMATHI.....APPLICANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

The Appeal: On sentence

[1] The Appellant has appealed against the sentence imposed on him of 10 years imprisonment for the offence of Indecent Act with a Child Contrary to Section 11(1) of the Sexual Offences Act. The grounds on which he is seeking for reduction of sentence are;

- (a) *That he is a pauper;*
- (b) *That was his first offence;*
- (c) *That he has attained trainings which will assist him lead a good life as a citizen;*
- (d) *That he is reformed now;*
- (e) *That he has children to take care;*
- (f) *That his wife died while he was in prison; and*
- (g) *For those reasons he is praying for mercy.*

[2] The respondent opposed reduction of sentence and submitted that the sentence imposed was the minimum sentence provide in law.

[3] The law under which he was convicted provides as follows:

11(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon convictions to imprisonment for a term of not less than ten years.

[4] The Section provides for the minimum penalty to be 10 years imprisonment. There are good policy and societal considerations for the provision of a minimum sentence. I appreciate the Appellant proclaimed that he has reformed and is willing to complete the process and become a law abiding as well as a productive citizen. But the legal prescriptions applicable in this case and in a process of appeal, may not allow me to reduce the sentence below the minimum penalty prescribed in law. In any case, he has served only 2 years and 7 months out of the original sentence. Nonetheless, I should mention that there are other avenues found in Remissions and Presidential Power of Mercy which may be invoked by the appropriate authorities upon satisfaction of all prerequisite conditions and adherence to the procedure applicable thereto.

[5] In the premise, I am constrained to decline the request for reduction of sentence. I uphold the sentence imposed by the Trial Court.

Dated, signed and delivered in open court this 22nd day of October, 2013

F. GIKONYO

JUDGE