

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 250 of 2009

ALI JUMA SENGE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with two counts of defilement of a child contrary to section 8(1)(2) of the Sexual Offences Act No. 3 of 2006 and in the alternative indecent Act with a child contrary to section 11 (1) of the same Act. In count 3 he was charged with the offence of attempted defilement contrary to section 9 (1) (2) of the same Act and in the alternative indecent act with a child contrary to section 11 (1) of the same Act.

After a full trial, he was convicted in count 1 and 2 with the offence of attempted defilement contrary to section 9 (1) and (2) of the Sexual offences Act and sentenced to 10 years imprisonment on each count and sentences ordered to run concurrently. He filed this appeal following the said conviction. The appeal was first heard by Warsame and thereafter Khaminwa J, who reserved judgment for 9th December, 2010. Regrettably this judgment was never written and at the instance of this court the appellant indicated that he would leave it to any other judge to write the judgment as he did not wish to argue the appeal again.

I have gone through the record and although the evidence adduced pointed to the commission of the offence of defilement contrary to section 8 of the Sexual Offences Act the learned trial magistrate convicted the appellant of the offence of attempted defilement. No notice was issued to him for the enhancement of the sentence and I consider it too late to address that issue. The sentence of 10years imprisonment on each count imposed against the appellant is the minimum provided under this law and for that offence. In fact he should count himself lucky that he was not convicted of the offence of defilement in which case he would be serving life imprisonment. That notwithstanding there is no room to disturb that sentence considering the ages of the complainant which are stated as 10 and 6 years respectively.

The offences were committed inside a place of worship to wit a mosque and other than defiling the complainants the appellant defiled a sacred place. No mercy can be shown upon such a person. This appeal is accordingly dismissed.

Orders accordingly.

Dated and delivered at Nairobi this 26th day of February, 2012.

**A. MBOGHOLI MSAGHA
JUDGE**