

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 25 of 2010

JATHAN MUKABI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No.3125 of 2009 of the Principal Magistrate's Court at Molo – G. SAGERO, RM)

JUDGMENT

Jotham Mukabi, the appellant herein, was charged with the offence of attempted defilement of a child contrary to **Section 9** of the **Sexual Offences Act No. 3 of 2006**, before Resident Magistrate, G. Sagero of Principal Magistrate's Court, Molo. He pleaded guilty to the charge and was sentenced to serve 10 years imprisonment. He appeals against sentence. The appellant's plea to the court is that he has realized his mistake; he is remorseful; he is a reformed person; has undertaken peer review courses in prison; is undertaking guidance and counseling and learning upholstery. He prays that he will be a better person when he comes out of prison and helpful to society.

The appeal was opposed because the appellant pleaded guilty to the offence.

The appellant was treated as a first offender there being no previous criminal records. The victim in this case was the appellant's own daughter. The court concedes the fact that the appellant has realized his mistake and has engaged himself usefully while in prison so that he can come out a better citizen, father and guardian to his children who look upto him for provision and protection. Under **Section 9** of the **Sexual Offences Act**, the minimum sentence is 10 years imprisonment. The **Section** reads:-

“S.9(2). A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term not less than 10 years.”

I find that the trial court exercised its discretion fairly and within the law when it gave the appellant the minimum sentence. 10 years being the minimum sentence under the said provision of law, this court has no good ground to interfere with it. In the end, I hereby dismiss the appeal.

DATED and DELIVERED this 23rd day of November, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

The appellant - present
Mr. Marete for the State
Kennedy – Court Clerk