



REPUBLIC OF KENYA

High Court at Machakos

Criminal Appeal 34 of 2011

JOHN KIOKO NDAMBUKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the judgment of the Senior Resident Magistrate A.W Mwangi delivered on 8/11/2010 in Kithimani S.O.A Case No. 18 of 2010)

(Before George Dulu J)

J U D G M E N T

The appellant **John Kioko Ndambuki** was charged with the offence of indecent act with a child contrary to **section 11(1)** of the **Sexual Offences Act No. 3 of 2006**. The particulars of offence were that on 10th September 2010 in **Matungulu** District within Eastern Province committed an indecent act with a child **B.S** intentionally by causing contact between his genital organs with that of **B.S** a child aged 14 years.

When he was brought before the lower court to answer to the charge on 20th September 2010, he pleaded not guilty. On 18/11/2011, however, after the complainant had testified, he changed his plea to guilty. After the facts were given, he accepted them and was convicted. He was sentenced to serve ten (10) years imprisonment. He has now appealed to this court on sentence. His grounds of appeal are as follows:-

1. **That he pleaded guilty to the charge.**
2. **That the sentence imposed upon him is too harsh and excessive.**
3. **That he prays the honourable court to consider the sentence imposed as he is a first offender.**
4. **That he promises not to indulge himself in any law breaking if given another chance.**
5. **That he prays the honourable court to reduce the sentence imposed upon him or substitute it to a non-custodial one.**

At the hearing of the appeal, the appellant submitted that his appeal was to mitigate on sentence. He asked that the sentence be reduced as he had been beaten by the police and his health was deteriorating in custody.

The learned State Counsel **Mr Mwenda** opposed the appeal. Counsel submitted that the sentence imposed was the minimum sentence for the offence under the **Sexual Offences Act**.

As a first appellate court, I have perused the record as I am required to do in a first appeal, in order to arrive at my own conclusions and inferences – See **Okeno –vs- Republic (1972) EA 32**.

In my view, the plea was properly taken. The conviction is therefore proper.

The appellant has appealed on sentence. He says that the sentence was harsh. He was sentenced to serve 10 years imprisonment. He was a first offender. I observe that he was convicted under **section 11(1) of the Sexual Offences Act**, which provides:-

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 conviction to imprisonment for a term of not less than 10 years.

In view of the above legal provisions with regard to the sentence for the offence, 10 years imprisonment is actually the minimum sentence. I agree with the learned State Counsel. Even if there were mitigating factors, the hands of the court were tied. I therefore, find that the sentence imposed was legal and was not excessive.

In the result, I dismiss the appeal and uphold the sentence imposed.

Dated and delivered at Machakos this 5th day of **December** 2012.

George Dulu
Judge

In presence of:-

Appellant present in person

N/A for State

Mutinda – Court Clerk