



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 228 OF 2009

*(From original conviction and sentence in Criminal Case NO. 48 of 2009 of the
Resident Magistrate's Court at Eldama Ravine – D. M. MACHAGE, SRM)*

HAMISI

SALIM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, **Hamisi Salim** was charged with the offence of attempted defilement contrary to section 95(1) of the Sexual Offence Act No. 3 of 2006. It was alleged that on 18/1/2009 in Koibatek district, he attempted to commit an act which would have caused the penetration of his genital organ into the genital organ of Z.Y , a child aged 9 years. In the alternative, he was charged with the offence of indecent act on a child contrary to **section 11(1) of the Sexual Offence Act, 2006**.

After a full trial, the appellant was convicted on the main charge and was sentenced to 10 years imprisonment on the main charge. The appellant is aggrieved by the sentence and pleads for the court's leniency and contends that since he was imprisoned, he has learnt a lot and prays that the sentence be reduced. Mr. Omari, learned counsel for the State opposed the appeal on grounds that the sentence meted out was as per the law provided.

Although the Appellant does not challenge the conviction, I do note that he was charged under Section 95(1) of the Sexual Offence Act 2006, and the Magistrate in his judgment went ahead to convict him under the said section. No such section exists under the Sexual Offences Act. That must have been a typing error and the section should have been Section 9(1) of the Sexual Offence Act 3 of 2006; I believe that was an oversight on the part of the Magistrate and failure to cite the correct section does not prejudice the appellant in any way since the appellant admits the offence in his petition in any event and has not

challenged the conviction.

Can the court interfere with the sentence? Section 9(2) of the Sexual Act provides that a person who commits an offence of attempted defilement on a child is liable upon conviction, to imprisonment for not less than 10 years. The Appellant was handed the minimum sentence for the offence committed. For that reason, this court is unable to interfere with the sentence. The appeal is thereby dismissed.

DATED and **DELIVERED** this 26th day of October, 2011.

R. P. V. WENDOH
JUDGE

PRESENT:

Appellant in person
Mr. Omari for State
Court Clerk - Kennedy