



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HIGH COURT CRIMINAL APPEAL NO. 88 OF 2009**

**ALI MOHAMMED JIMMY .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

Ali Mohamed Jimmy, the Appellant before the court was convicted on his own plea of guilty by a Senior Resident Magistrate court at Makadara on the 4<sup>th</sup> February 2009, for the offence of attempted defilement contrary to **Section 9(1)** as read with **(2)** of the **Sexual Offences Act No. 3 of 2006**. He was sentenced to serve ten years imprisonment.

Being aggrieved by the sentence meted out by the trial magistrate for reasons that it was harsh and excessive the Appellant lodged an appeal on 9<sup>th</sup> March 2009.

His appeal is predicated on five grounds of appeal namely that:

1. He is a first offender;
2. He is a youth depended upon by the nation for development and leadership;
3. He committed the offence while under the influence of alcohol and out of his common senses;
4. He has learnt from his mistake;
5. He was enrolled in a youth group in his constituency set to benefit from government initiated youth enterprise fund.

The sixth ground was actually a summary of his prayers that the sentence be reduced and in the alternative a non custodial sentence be imposed.

The State through Mrs. Mwanza opposed the application on the grounds that the Appellant was charged and convicted under **Section 9(1)** as read with **(2)** of the **Sexual Offences Act No. 3 of 2006** and that the sentence meted out to him was the minimum mandatory sentence provided for upon conviction under the said Section.

**Section 9(1)** of the said Act reads;

**“A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.”**

**Sub Section (2)** provides:

**“A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.”**

From the reaching of the law therefore the trial magistrate had no lee way to impose a term of imprisonment other than one that was ten years or more.

The court therefore agrees with the State Counsel and will not interfere with the sentence of the lower court.

**L. A. ACHODE  
JUDGE  
13<sup>th</sup> October 2011**

This judgment was written signed and delivered in court and on the spot in the presence of the Appellant and Mrs. Mwanza for the State.

**L. A. ACHODE  
JUDGE  
13<sup>th</sup> October 2011**

**Appellant:** I am satisfied with the court’s explanation.

**L. A. ACHODE  
JUDGE  
13<sup>th</sup> October 2011**

Signed dated and delivered in open court this **thirteenth** day of **October, 2011.**

**L. A. ACHODE  
JUDGE  
13<sup>th</sup> October 2011**