

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Revision 39 of 2010

REPUBLIC.....STATE

VERSUS

AMOS MUTIGA SARISO.....ACCUSED

(Arising from the Senior Resident Magistrate's Criminal Case No. 544 of 2008 at Othaya)

ORDER ON REVISION

AMOS MUTIGA SARISO, the applicant herein was tried and convicted for the offence of attempted defilement contrary to section 9(1) of the Sexual Offences Act No. 3 of 2006. He was then sentenced to serve 1 year in prison. The proceedings of the trial court were placed to my attention for perusal under section 363 of the Criminal Procedure Code.

In exercise of this court's supervisory jurisdiction of revision under section 362 perused the aforesaid proceedings and found out that the trial magistrate pronounced a sentence which was far below the minimum prescribed under section 9(1) of the Sexual Offences Act. In such cases the law mandates this court to correct the anomaly on condition that the convict is heard since the alteration will enhance the sentence upwards. Pursuant to section 364(2) of the Criminal Procedure Code this court heard the submissions of the applicant and the learned state counsel. The applicant merely urged this court to be lenient to him. Mr. Makura, learned state counsel urged this court to correct the sentence.

I have reconsidered the applicant's facts in mitigation. The law sets a minimum sentence for such

an offence to 10 years imprisonment. I will be lenient to the applicant because he had already been given a false hope that he would serve a lenient sentence of 1 year. That sentence is illegal. In exercise of my revisionary power I hereby set aside the order of sentence of 1 year imprisonment and substitute it with an order sentencing Amos Mutiga Sariso to 10 years imprisonment. The sentence will run from the date of the original sentence i.e. 9/10/2009.

Dated and delivered this 7th day of May 2010.

J.K. SERGON

JUDGE

In open court in the presence of the applicant and Mr. Makura for the state.