

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 125 OF 2010

(From original conviction and sentence in Criminal Case No. 1985 of 2009 of the Principal Magistrate's Court at Nyahururu - T. Matheka {P.M.})

JOSEPH NJOROGE KINYANJUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of attempted defilement contrary to Section 9(1) of the Sexual Offences Act, 2006 (No. 3 of 2006). He pleaded guilty to the charge and was on his own plea convicted. Upon the facts being narrated by the prosecution, the Appellant pleaded that the facts were correct, and a plea of guilty was confirmed by the trial court. On being asked by the court to mitigate the Appellant said he had "**nothing to say**".

The punishment for the offence of attempted defilement under Section 9(2) of the Sexual Offences Act is imprisonment for not less than ten years. The Appellant was sentenced to fifteen years. The law is that where a statute provides for a minimum sentence, that is the sentence which the court may impose. That in effect is the requirement of Section 7(1)(b) of the Criminal Procedure Code. The trial court erred in sentencing the Appellant to a term not provided for under the statute. The sentence was illegal.

For those reasons, and in exercise of the court's discretion under Section 348 and Section 354(3)(b) of the Criminal Procedure Code, the sentence of fifteen years is hereby reduced to ten (10) years to run from the date of the Appellant's conviction.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 8th day of October 2010

M. J. ANYARA EMUKULE
JUDGE