



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO 71 OF 2018**

**JAMES WACHIRA MUTHONI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From original Sentence in Nanyuki CM Sexual Offence Case No 7 of 2017 – E Ngigi, SRM)***

**J U D G M E N T**

1. The Appellant herein, **JAMES WACHIRA MUTHONI**, was convicted after trial of **attempted defilement** contrary to **section 9(1) & (2)** of the **Sexual Offences Act, 2006**. It was alleged in the particulars of the offence that on 31/01/2017 in Laikipia County he attempted to cause his penis to penetrate the vagina of one MW, a child aged 4 years.
2. On 06/07/2017 the Appellant was sentenced to serve ten (10) years imprisonment. He has appealed only against that sentence.
3. The offence of attempted defilement under section 9 of the Sexual Offences Act carries a minimum term of ten (10) years imprisonment, once the trial court decides that the offender deserves a custodial sentence. The Appellant got that minimum.
4. With the declaration of the **Supreme Court of Kenya** in the now notorious case of **Muruatetu** regarding statutory mandatory sentences, this court is entitled to interfere with the Appellant's sentence should it find it appropriate to do so.
5. Obviously the seriousness of the offence that the Appellant stood convicted of is not in doubt; the victim was a child aged only 4 years. Luckily there was penetration; however, in the process the Appellant physically and psychologically injured the complainant. He also appears to have transmitted to her some kind of infection.
6. To his credit the Appellant has now owed up his offence, having appealed only against the sentence. That is a sign of remorse and contrition. He was and still is a young man, now aged 26 years. He deserves a second chance. He also appears to have been in custody from the time of his arrest on 10/02/2017 to the time of his sentencing on 06/07/2017, a period of about five (5) months. I will take that period into account.
7. I will in the event partially allow the Appellant's appeal against sentence by setting aside the ten (10) years imprisonment imposed upon him and substituting therefor seven (7) years imprisonment, the same to run from the date of his sentencing by the trial court – 06/07/2017. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 9<sup>TH</sup> DAY OF JUNE 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 10<sup>TH</sup> DAY OF JUNE 2021**