



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.1132 OF 2018**

**MORGAN RUMENDA MASON.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Morgan Rumenda Mason was convicted of the offence of **attempted rape** contrary to **Section 4** of the **Sexual Offences Act**. The particulars of the offence which were established by the prosecution were that on 28<sup>th</sup> February 2017 at Bomas Forest Langata in Nairobi County, the Appellant intentionally and unlawfully attempted to cause his penis to penetrate the vagina of VW without her consent. Whereas the Appellant pleaded not guilty to the charge, after full trial, he was found guilty and accordingly convicted. He was sentenced to serve five (5) years imprisonment. The sentence was imposed on 10<sup>th</sup> November 2017.

The Applicant has moved this court by a notice of motion to have the sentence revised on the grounds that he ought to have been sentenced to serve a non-custodial sentence. He urged the court to take into consideration that he had been in prison since 28<sup>th</sup> February 2017 when he was arrested. He stated that he is a first offender and was the sole breadwinner for his wife and four children. He pleaded for leniency from the court. Ms. Kimaru for the State opposed the application. She submitted that the sentence of five years imprisonment that was imposed on the Applicant was extremely lenient taking into consideration the circumstances in which the offence was committed. She was of the view that the Applicant was not remorseful and should therefore fully serve the custodial sentence that was imposed on him.

This court has carefully re-evaluated the rival submission made by the parties to this application. This court can only interfere with the exercise of discretion by the trial court when it sentenced the Applicant if it is established that the trial court either applied the wrong principle of law or failed to take into consideration a relevant factor when it sentenced the Applicant. In the present application, it was clear to this court that the sentence that was imposed by the trial court was extremely lenient taking into consideration the offence that the Applicant committed. The trial court did not make any error of principle or failed to take into consideration any relevant factor recognized by the law when it sentenced the Applicant to serve the said term in prison.

In the premises therefore, this court finds no merit with the Applicant's application as a result of which the Applicant's application is hereby dismissed. The sentence of the trial court is confirmed. It is so ordered.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2019**

**L. KIMARU**

**JUDGE**