

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. 34 OF 2018

TOM MWANGI KAMAU.....APPLICANT

VERSUS

REPUBLIC.....STATE

RULING UPON APPLICATION FOR RE-SENTENCING

1. Tom Mwangi Kamau, the Applicant herein was charged with five offences. In the first three offences, he was charged with defilement contrary to section 145(1) of the Penal Code (now repealed). The counts related to three different children aged 14 years old on diverse dates in 2004.
2. In the last two counts, the Applicant was charged with the offence of attempted defilement contrary to section 145(2) of the Penal Code. In the alternative, he was charged with indecent assault contrary to section 144(1) of the Penal Code. These two charges related to two other minors also aged 14 years old.
3. The Applicant pleaded not guilty and the case proceeded to full hearing. He was convicted of all five counts. The Trial Court sentenced him to serve five years imprisonment on each count. The Court also ruled that the sentences were to run consecutively.
4. The Applicant was aggrieved by that decision of the Trial Court. He filed an appeal to the High Court against both the conviction and sentence. The appeal was duly heard. A judgment was delivered on 10/06/2011 by Lady Justice R.P.V. Wendoh. The judgment confirmed the conviction. It also enhanced the sentenced to seven (7) years imprisonment on each count and ordered that the sentences run consecutively.
5. The Applicant was informed of his right of appeal. He did not appeal against the decision of the High Court. Instead, the Applicant has now filed a new Application before the High Court in which he seeks a review of his sentence.
6. Needless to say, the High Court does not have jurisdiction to review its own decisions on sentence absent obvious typographical errors on the face of the record. Here, the Applicant is asking the Court to exercise its discretion to review the sentencing decision of another High Court judge. It is an inappropriate application. Such an application can only be entertained by a higher Court – the Court of Appeal. There is nothing more to say about this Application. It is hereby dismissed in its entirety.
7. Orders accordingly.

Dated and delivered in Nakuru this 17th day of July, 2019

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JOEL NGUGI

JUDGE