

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO. 24 OF 2017

JWN.....APPELLANT

-VERSUS -

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.20 of 2015

in Murang'a Chief Magistrate's Court by Hon. J.W.Onchuru PM on 29th March 2017)

JUDGEMENT

1. Upon arraignment, the Appellant was charged with the offence of attempted incest by a male person contrary to Section 20(1) and (2) of the Sexual Offences Act. The particulars being that on the 11th May, 2015 at [particulars withheld] area within Murang'a County, attempted to cause his penis to penetrate the vagina of CWN a child he knew to be his niece aged 6 years. In the alternative he faced the charge of committing an indecent act with a child contrary to Section 11(1) of the sexual Offences Act. Particulars being that on the 11th day of May, 2015 at [particulars withheld] area within Murang'a County, he intentionally committed an indecent act to CWN, a child aged 6 years by unlawfully causing his penis to touch her vagina.
2. Having been taken through full trial, he was found guilty on the main count, convicted and sentenced to ten (10) years imprisonment.
3. Aggrieved, he now mitigates on sentence, on the grounds that he has been in custody for 2½ years where he has acquired carpentry skills that he would wish to use while out of prison. That he has his two (2) children aged eight (8) and twelve (12) years respectively who are in custody of their maternal grandmother after their mother passed on and being released will enable him to take up his responsibilities.
4. The appeal is opposed by the Respondent (State) Ms Keya, learned Counsel for the State urged that the Appellant was sentenced to a sentence that is legal being the minimum prescribed sentence for the offence.
5. The principles of interfering with sentence were considered in the case of **Bernard Kimani Gacheru-vs-Republic, Cr. App No. 188 of 2000** where the Court stated thus;-

“It is now settled law, following several authorities by this Court and by the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case or that the trial Court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if the Appellate Court feels that the sentence is heavy and that the appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, any one of the matters already stated is shown to exist.”

6. The Appellant is not alleging that the trial Court overlooked some material facts or that the sentence is illegal. His contention is that he has acquired skills and he would like to take up his full responsibility as a father. It is not suggested that he has reformed.

7. That notwithstanding, the learned trial magistrate exercised his discretion appropriately by imposing the minimum prescribed sentence for the offence; therefore, I find the appeal lacking merit. In the premises it is dismissed.

DATED, SIGNED, AND DELIVERED THIS 4TH DAY SEPTEMBER, 2019.

HON. L.N. MUTENDE

JUDGE