



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 39 OF 2015**

**STEPHEN GIKUNJU MWANGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal from Original Conviction and Sentence in Kangema Principal Magistrate's Court Criminal Case No.50 of 2015 by Hon. Kagoni E.M.(SRM) on 24/4/15)*

**JUDGEMENT**

1. Upon arraignment, Stephen Gikunju Mwangi, the appellant, was charged with the offence of committing an indecent act with a child, contrary to section 11(1) of the Sexual Offences Act, No. 3 of 2006. The victim of the offence was a child aged seven (7) years and eleven (11) months.
2. He was taken through full trial, convicted and sentenced to ten (10) years imprisonment.
3. Aggrieved, he appealed against the conviction and sentence. However, when the appeal came up for hearing he abandoned the appeal against the conviction and mitigated on sentence.
4. It was averred that the sentence meted out was harsh as the mitigating factors were not considered.
5. The respondent (state) through learned counsel, Ms Keya opposed the appealed. She urged that the sentence meted out was legal being the minimum sentence for the offence.
6. Principles of interfering with sentence by an appellant court were enunciated in the case of **Ogola s/o Owour –V- Republic (1954) EACA 270** thus:

**“The Court does not alter a sentence on the mere ground that if the members of the Court had trying the appellant they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercise by a trial Judge unless as was said in JAMES VS. R. (1950) 18 EACA 147 it is evident that the judge has acted upon some wrong principle or overlooked some material factors. To this we would also add a third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case R. VS. SHERSHAWSKY (1912) EACA 28 TLR 263.”**

7. Section 11(1) of the Sexual Offences Act provides thus:

**“Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.”**

The sentence that was imposed by the trial court was the minimum prescribed sentence for the offence. Therefore, the learned magistrate did not act upon wrong principles. The sentence imposed having not been excessive, the appeal fails and is accordingly dismissed.

8. **It is so ordered**

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 6<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

**L. N. MUTENDE**

**JUDGE**