

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 45 OF 2017

PHILIP MWITA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. R.M Oanda – SRM dated 7th February 2017 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No. 951 of 2016)

JUDGMENT

1. The appellant, PHILIP MWITA, pleaded guilty to the offence of attempted defilement contrary to section 9(1) as read with section 9(2) of the Sexual Offences Act. The particulars of the charge were that on 16th July 2016 at [particulars withheld] Village, Transmara West District within Narok County, he attempted to penetrate his penis into the vagina of LK, a girl aged eight years. He was convicted and sentenced to ten years imprisonment.

2. In his petition of appeal the appellant states that he only wishes to appeal against the sentence and that the sentence is excessive and that he is entitled to a less severe sentence.

3. This is a case where the statute provides a mandatory minimum sentence of ten years imprisonment. The court has no discretion in the matter and recourse cannot be made to section 389 of the Penal Code (Chapter 63 of the Laws of Kenya) which prescribes a lesser or at least one-half of the punishment for the offence attempted because attempted defilement is a specific offence under the Sexual Offences Act for which a specific penalty is prescribed.

4. I therefore have no authority to impose a lesser sentence. The appeal is dismissed.

Dated and delivered at Kisii this 9th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.