

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 20 OF 2017

WILSON KIBET.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. B. Ochieng' – SPM(Ag.) dated 24th January 2014 at the Principal Magistrate's Court at Kilgoris in Criminal Case No. 720 of 2013)

JUDGMENT

1. Although the appellant was charged with the offence of attempted defilement contrary to **section 9** of the Sexual Offences Act ("the SOA"), he was convicted of the alternative charge of committing an indecent act with a child contrary to **section 11(1)** of the Sexual Offences Act. The particulars of the offence were that on 2nd September 2013, in Transmara West District, he unlawfully and intentionally caused his penis to come into contact with the vagina of YS, a girl aged 5 years. He was sentenced to 10 years imprisonment.

2. The appellant's appeal is on the sentence only. The appellant states that he has been in prison for a period of 5 years where he has found the Lord Jesus Christ and has now reformed. He has also completed the Government Trade Tests for tailoring and if released he would be a good citizen.

3. Despite his plea for a variation of the sentence, I find that my discretion is constrained because the sentence of 10 years imprisonment is the mandatory minimum sentence under section 11 of the Sexual Offences Act. It was lawfully imposed by the trial magistrate and there is no legal authority for this court to set it aside.

4. The appeal is dismissed.

Dated and delivered at Kisii this 13th day of November 2018.

D.S MAJANJA

JUDGE

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

Appellant in person.