



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO. 13 OF 2017**

**PETER LTAJIR .....APPELLANT**

*versus*

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon. A. GACHIE – RESIDENT MAGISTRATE dated 27<sup>TH</sup> January 2016 in Maralal Chief Magistrate’s Court Criminal Case No. 165 of 2015)*

**JUDGMENT**

1. **PETER LTAJIR**, the appellant herein was charged before the Maralal Principal Magistrate’s Court with the *offence of defilement contrary to section 8(1)(4) of the Sexual offence Act* on the main Charge, and on the alternative charge he was charged with the *offence of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act*. After trial the trial court convicted him on the alternative charge and sentenced him to 10 years imprisonment. He now appeals only against sentence.

2. In his written submissions the appellant prayed that this court would consider the mitigation he offered at the trial court. He also alleged that the complainant’s mother, who was his employer, fabricated the case against him to evade paying him his salary.

3. The child the appellant was convicted of having committed indecent act against was 16 years old. She was the daughter of the appellant’s employer. The appellant had been employed to herd goats of her mother. It is while the child/complainant was fetching water that she was accosted by the appellant. He committed the indecent act near a bush.

4. The appellant was convicted of having committed an indecent act against the complainant contrary to **section 11(1)**. That section provides:-

***“11.(1) 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.”***

5. Under that section the offence which the appellant was convicted attracts a maximum sentence of 10 years. **Section 66(1)** of the Interpretation and General Provisions Act (Cap 2) provides:-

***“Where in written law a penalty is prescribed for an offence under written law, that provision shall, unless a contrary intention appears, mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.”***

6. The trial court meted out the correct sentence prescribed in section 11(1). That was the only sentence which attract a conviction under that section. It follows that appellant's appeal against sentence must and does fail. The appellant's appeal is therefore dismissed and the trial court's sentence is confirmed.

**DATED and DELIVERED at NANYUKI this 14<sup>TH</sup> DAY of JUNE 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Peter Ltajir .....

For the State: .....

Language: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**