



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL APPEAL NO. 57 OF 2014**

**BARNABAS NGONDI NJUKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(An Appeal from the Sentence and Conviction of Ag. Senior Resident Magistrate Siakago in Criminal Case No. 650 of 2013 on 26th September, 2014)*

**R U L I N G**

The appellant lodged this appeal against the judgment of the Ag. Senior Resident Magistrate Siakago. He was charged and convicted of the offence of incest contrary to Section 20(1) of the Sexual Offences Act. He was sentenced to serve ten (10) years imprisonment.

During the time of hearing the appeal, the appellant informed the court that he was abandoning his appeal. He said he wanted to make mitigation regarding sentence with a view of having it reduced or substituted with a non custodial sentence. The appeal was therefore marked as withdrawn.

On withdrawing of the appeal, this court accepted the written mitigation on sentence. The request for the applicant does not fall under Section 362 and 364 of the Criminal Procedure Code. He is not faulting the sentence imposed but states that he is pleading for the mercy of the court giving two reasons; that he is a pauper; that it was his first time to appear before any court of law for any offence; and that he earns his living as a casual labourer.

Section 20(1) provides that any person convicted of the offence of incest is liable to imprisonment for a term of not less than 10 years. The wording of the section takes away the discretion of the court in sentencing which is a common feature running across the board of the Sexual Offences Act.

The trial magistrate on conviction would not have given the applicant any term less than 10 years. This court finds itself in a similar predicament. The sentence is lawful under the law and this court cannot interfere with it.

I therefore decline to grant the application to review sentence by the applicant. It is hereby dismissed and of ten (10) years imprisonment upheld.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 3RD DAY OF MARCH, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Applicant present in person**

**Ms. Matere for State**

**F. MUCHEMI**

**JUDGE**