



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.105 OF 2013**

*(An Appeal arising out of the conviction and sentence of Hon. A.R. Ireri – Ag. PM delivered on 30<sup>th</sup> January 2013 in Limuru SPM. CR. Case No.710 of 2010)*

**GEOFFREY KARUNGU NJERI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Geoffrey Karungu Njeri was charged with 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 offence were that on 27<sup>th</sup> June 2010 at *[particulars withheld]* in Kiambu County, the Appellant attempted to penetrate M N M's vagina, a child aged 7 years, by inserting his fingers and penis. He was alternatively charged with **committing an indecent act** contrary to **Section 11(1)** of the **Sexual Offences Act**. The particulars of the offence were that on the same day and in the same place, the Appellant indecently assaulted M N M, by causing his fingers and penis to touch her vagina. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, the Appellant was convicted of the disclosed offence of **attempting to commit incest** contrary to **Section 20(3)** of the **Sexual Offences Act**. The Appellant was sentenced to serve ten (10) years imprisonment.

Although the Appellant was aggrieved by his conviction and sentence, during the hearing of the appeal, he abandoned his appeal on conviction. He however pleaded with the court for reduction of custodial sentence that was imposed upon him. In his written submission, the Appellant urged the court to take into consideration that in the period that he had been in prison, he had learnt his lesson and was now reformed. He had learnt various trades including carpentry and metal work. If released, he would be engaged in a useful economic activity. He stated that he was suffering from ulcers. His health condition was not good. He urged the court to take into consideration the fact that he was remorseful and would not repeat the offence if he was sentenced to serve a non-custodial sentence. He had embraced God and was determined to go back to school if released. He urged the court to give him another chance in life. Ms. Kule for the State filed a notice of enhancement of sentence. She submitted that the sentence imposed on the Appellant was unlawful since he ought to have been sentenced to serve life imprisonment. She urged the court to enhance the sentence imposed on the Appellant.

The Appellant is appealing against the sentence that was imposed upon him. Under **Section 20(2)** of the **Sexual Offences Act**, any male person who attempts to commit incest shall upon conviction be sentenced to a term of imprisonment of not less than ten (10) years. In the present appeal, the Appellant was sentenced to serve the minimum sentence provided by the law. This court cannot fault the trial magistrate for making such finding. In any event, the trial magistrate was exercising judicial discretion when she sentenced the Appellant to serve the said custodial sentence. This court can only interfere with such exercise of discretion if it is established either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Appellant.

In the present appeal, it has not been demonstrated that the trial magistrate applied the wrong principle of

the law when she sentenced the Appellant to serve the custodial sentence. The sentence that was imposed on the Appellant was legal. The Appellant's appeal therefore lacks merit and is hereby dismissed. The Appellant shall continue to serve the sentence that was imposed by the trial court. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2015**

**L. KIMARU**

**JUDGE**