



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MWERA, MUSINGA & M'INOTI. J.J.A.)

Criminal Appeal NO. 142 OF 2013

BETWEEN

SIMON KARANJA KIARIE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from a Ruling of the High Court of Kenya at Nairobi (Ochieng, J.) dated 1st February, 2012

HC. CR.A. No. 524 of 2009

JUDGMENT OF THE COURT

The appellant was charged with attempted defilement of a boy aged twelve years. After a full trial he was convicted and sentenced to ten (10) years' imprisonment. Being dissatisfied with the said conviction and sentence, the appellant preferred an appeal to the High Court. The appeal was dismissed in its entirety.

The appellant moved to this Court and filed a document headed:

"MITIGATION OF APPEAL".

The aforesaid document was filed on 2nd July, 2012. Basically, the appellant stated that he had served nearly one half of the sentence handed down by the trial court and is remorseful and urged the Court to reduce the sentence by the trial court. He added that he had since reformed and undertaken various rehabilitative courses and acquired excellent carpentry skills. He would therefore be a useful member of the society if the Court were to order that he be set free.

Miss Oundo, Senior Assistant Director of Public Prosecutions for the respondent, opposed the appeal. She submitted that the Court does not have jurisdiction to interfere with the sentence passed by the trial court. She added that the appellant had been sentenced to the minimal sentence for the offence committed.

This being a second appeal, the jurisdiction of this Court is circumscribed by Section 361 (1) of the Criminal Procedure Code which states as follows:

"361. (1) A party to an appeal from a subordinate court may, subject to subsection (8) appeal against a decision of the High Court in its appellate

2. jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section -

- a. on a matter of fact, and severity of sentence is a matter of fact; or
- b. against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under Section 7 to pass that sentence."

The appellant herein is not challenging legality of the sentence that was meted out. He is merely arguing that the same was severe and urges this Court to reduce it to the period already served. This Court has severally held that in such an instance it lacks jurisdiction to interfere with a lawful sentence. See RAPHAEL KAVOI KIILU v REPUBLIC [2010] eKLR, ZACHARIA WAITHAKA MWAURA v REPUBLIC [2010] eKLR.

Jurisdiction is the bedrock of any court decision and without it a court has no power to do anything, other than to dismiss the matter before it, as we hereby do in respect of this appeal.

Dated and Delivered at Nairobi this 14th day of November, 2014.

J.W. MWERA

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

**I certify that this is a
true copy of the original.**

DEPUTY REGISTRAR