



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL 283 OF 2007**

**JOSEPH ETABO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the judgment of the High Court of Kenya at Kitale (Ochieng, J) dated 5<sup>th</sup> December, 2007*

**in**

**H. C. CR. A NO. 91 OF 2006)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

This is a second appeal. The appellant, **Joseph Etabo**, was charged and convicted on his own plea of guilty of the offence of attempted rape contrary to section 141 of the Penal Code, and sentenced to 20 years imprisonment by the Chief Magistrate at Kitale on 29<sup>th</sup> September, 2006. He appealed against both conviction and sentence to the superior court (Ochieng, J.) who dismissed the appeal against both conviction and sentence.

Aggrieved by that decision, the appellant, who is unrepresented, appealed to this court on the following home-made grounds:

- “1. THAT Your lordships I had never been arrested or arraigned in court before therefore when my pleas (sic) was taken I was under difficult circumstances (sic) and subjected to mental torture.**
- 2. THAT I pleaded guilty due to confused minds (sic).**
- 3. THAT I did not commit the offence.**
- 4. THAT I plead for leniency for a fair trial.” (sic)**

These grounds are almost exactly the same as those that formed the basis of the appellant’s first appeal before the superior court. They are based on “facts”, not law. As we have stated, this is a second appeal. By dint of the provisions of section 361 of the Criminal Procedure Code we are enjoined to consider only matters of law and not matters of fact. The superior court, having considered all the above grounds, confirmed the conviction as safe. We are of the view that both the lower courts came to the correct

conclusion as the conviction was based on the appellant's own plea of guilty.

On sentence, as this is a second appeal, consideration of severity of sentence is not within our jurisdiction, unless the sentence given was unlawful. That is not the case here. The appeal has no merits, and the same is dismissed.

**Dated and delivered at Eldoret this 29<sup>th</sup> day of May, 2009.**

**P. N. WAKI**

.....

**JUDGE OF APPEAL**

**ONYANGO OTIENO**

.....

**JUDGE OF APPEAL**

**ALNASHIR VISRAM**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**