



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL 70 OF 2006**

**JOHN MWANGI PETER ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from sentence of the High Court of Kenya at Kitale (Lady Justice Karanja) dated 14<sup>th</sup> February, 2006 In H.C.CR.A. NO. 111 OF 2005)**

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**JUDGMENT OF THE COURT**

On his own plea of guilty, *John Mwangi Peter*, the appellant, was convicted and sentenced to an imprisonment term of 10 years for the offence of attempted rape contrary to **section 141** of the Penal Code. His first appeal against sentence was dismissed by the superior court. In the appeal before us he complains about the severity of the sentence and prays that the sentence of 10 years imprisonment be reduced on the ground that it is excessive.

The facts giving rise to the offence as were narrated by the prosecutor were that on 15<sup>th</sup> September, 2004, GMM was asleep in her house. Her husband was not in. The appellant who was her neighbour went to her house carrying a large black paper bag which he handed over to her saying that he had been sent by her husband to deliver it to her. Thereafter he suddenly attacked the complainant, forcibly removed her under-pant which he used to cover her mouth to prevent her from screaming. She nonetheless managed to scream and thus attracted neighbours who responded to her screams. In the course of removing the complainant's pants he touched her "private parts".

The appellant admitted those facts and was thereafter convicted and sentenced as earlier on stated.

The offence of attempted rape carried a maximum sentence of life imprisonment with hard labour. The appellant was sentenced to ten years imprisonment with hard labour. The sentence is lawful and by dint of the provisions of **section 361 (1)** of the Criminal Procedure Code, this Court lacks jurisdiction to interfere with the sentence, this being a second appeal. The appellant is not alleging that the sentence meted out to him was unlawful, but that it is excessive.

**Section 361 (1)** above, provides as follows:

***"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 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”.*

As the appellant’s memorandum of appeal merely challenges severity of sentence, this Court lacks the jurisdiction to deal with the appeal. Consequently, the appeal fails and is dismissed. Order accordingly.

**Dated and delivered at Eldoret this 11<sup>th</sup> day of April, 2008.**

**S. E. O. BOSIRE**

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**JUDGE OF APPEAL**

**W. S. DEVERELL**

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**JUDGE OF APPEAL**

**D. K. S. AGANYANYA**

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**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR