



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 66 OF 2006

SOLOMON KIPTOO SAWE.....APPELLANT

AND

REPUBLIC.....REPUBLIC

(Appeal from a judgment of the High Court of Kenya

Kitale (Karanja, J) dated 14th February, 2006

in

H.C.CR.A. NO. 32 OF 2005

JUDGMENT OF THE COURT

The appellant *SOLOMON KIPTOO SAWE* was charged with the offence of defilement of a girl contrary to *Section 145(1)* of the Penal Code. The particulars of the charge were that on the 27th day of September, 2003 at *[particulars withheld]*, in Trans Nzoia District within Rift Valley Province, he unlawfully had carnal knowledge of *S.N.*, a girl under the age of sixteen years. He pleaded guilty to the charge and was convicted on his own plea and sentenced to imprisonment for 20 years plus hard labour.

He appealed against that sentence to the superior court and the superior court (*Karanja J.*) after hearing his appeal dismissed it addressing herself thus:

“My view is that the learned trial Magistrate considered the appellant’s mitigation and all the circumstances surrounding the matter. He imposed a sentence of 20 years imprisonment. This was a lawful sentence. I agree with the learned state counsel that the same was not excessive. The appellant is said to be 25 years and should be able to handle the said sentence. I have no reason to interfere with the same. This appeal is therefore dismissed. The sentence of 20 years imprisonment plus hard labour is hereby confirmed.”

He was not satisfied and hence this appeal before us which is a second appeal and is only on sentence.

Section 361(a) and (b) of the Criminal Procedure Code does not allow us to hear an appeal such as the one before us which is based on sentence only and is a second appeal. That being the case, the appeal is incompetent. It is dismissed.

DATED and DELIVERED at ELDORET this 18th day of September, 2007.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.N. WAKI

.....

JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR