



**Kiprop v Republic (Criminal Appeal E021 of 2023)
[2024] KEHC 9803 (KLR) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E021 OF 2023**

JR KARANJA, J

JULY 30, 2024

BETWEEN

NICHOLAS KIPROP APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant Nicholas Kiprop appeared before the Chief Magistrate at Kericho charged with defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*. There was an alternative count of indecent act with a child contrary to section 11(1) of the *sexual offences Act*. It was alleged that on unknown dates in the month of February, 2020 at Soin –Sigowet Kericho County the Appellant defiled a girl child referred to as MC aged fourteen (14) years or that he committed an indecent act of touching her private parts.

2. After pleading not guilty, the affidavit was tried and convicted on the main count. He was then sentenced to serve twenty (20) years imprisonment.

Being dissatisfied with the conviction and sentence the Appellant preferred this appeal on the basis of the grounds set out in this petition of appeal filed herein on 5th June, 2023 which are essentially on the sentence only where upon the Appellant complains that the sentence imposed upon him by the trial court was excessive.

3. Indeed, the appeal is on sentence only and at the hearing of the appeal by way of written submissions, the Appellant appeared in person while the learned prosecutor counsel. Mr. Karanja appeared for the State/Respondent which opposed the appeal.

This court having considered the appeal on the basis of the supporting grounds and the rival submissions would state that an Appellate court would not easily interfere with a sentence imposed by a trial court unless the sentence was unlawful or manifestly excessive in the circumstances of the case.



4. In this case, it transpired from the evidence that the Appellant and the complainant were in the habit of engaging in sexual intercourse even though the complainant was a minor aged fourteen (14) years and that Appellant, thought she was over eighteen (18) years. Their sexual escapades remained unknown and undiscovered until the complainant in due course became pregnant and the pregnancy was traced to the Appellant who was then arrested and charged with the present offence for which he was convicted and sentenced to twenty (20) years imprisonment. Had the pregnancy not been discovered the Appellant and the complainant would perhaps have continued with their “walk in the air”.
5. Given the circumstances of the case, the fact that the Appellant was a first offender and that the probation report indicated that he was remorseful for the offence although it was non-committal on the imposition of a non-custodial sentence and the fact that the Appellant’s unlawful act with the connivance of the complainant brought forth a bundle of joy in the form of a baby girl called Brenda who requires much needed parental support, the sentence imposed by the trial court was rather excessive and ought to be reduced.
6. Consequently, the appeal succeeds to the extent that the twenty years imprisonment sentence is hereby set aside and substituted with a sentence of the time already served by the Appellant inclusive of the period spent by him in custody prior to the sentence.
7. Ordered accordingly.

J.R. KARANJA

JUDGE.

DATED, SIGNED AND DELIVERED AT KERICHO ON THIS 30TH JULY, 2024.

J.R. KARANJAH

JUDGE.

In the presence of;

Appellant ; Present in Person

Mr. Karanja for State.

Mr. Kibet Court Assistant.

