



**Maina v Republic (Criminal Appeal E052 of 2022)  
[2024] KEHC 10968 (KLR) (28 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10968 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL APPEAL E052 OF 2022  
CJ KENDAGOR, J  
AUGUST 28, 2024**

**BETWEEN**

**JOHN WAINAINA MAINA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the sentence arising in Mukurweini Law Courts Sexual Offences Case number 15 of 2020, delivered on 08th November, 2022 by Hon. D.K. Matutu, S.P.M.)*

**JUDGMENT**

1. The Appellant herein was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* No 3 of 2006. The victim, VNM, was a 14-year-old girl. At the conclusion of the trial, the learned trial magistrate found him guilty. He was convicted on the main charge and sentenced to 20 years imprisonment.
2. Dissatisfied with the sentence, he filed a Petition of Appeal on 21<sup>st</sup> November, 2022. The appeal was canvassed through written submissions filed by the appellant on 5<sup>th</sup> May, 2023 and the respondent on 15<sup>th</sup> September, 2023.
3. After reviewing the record and the parties' submissions, the issue for determination is whether this court should interfere with the sentence meted out against the appellant.
4. In the case of Shadrack Kipchoge Kogo v Republic Criminal Appeal No. 253 of 2003 (Eldoret), the Court of Appeal stated as follows;

“Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that



a wrong principle was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred”

5. Similarly, in the case of *Wanjema v Republic* (1971) E.A. 493 the court stated as follows;

“An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”
6. In determining whether to revise the sentence imposed herein, I note section 8(1), (3) of the *Sexual Offences Act* provides as follows:
  - 1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
  - 2) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
7. Mitigation is a crucial element of a fair trial. Upon conviction, the appellant herein had an opportunity to present his mitigation. He informed the trial court that he had dental issues, which caused his teeth to fall out. He pleaded for forgiveness and requested that the court be lenient in sentencing. The appellant was a first-time offender, and the trial court clearly stated that it considered his mitigation. The court also highlighted the seriousness of the offence and its impact on the minor.
8. The appellant has argued that while serving the sentence, he has become remorseful and benefited from the prison rehabilitation programs. He stated that he has gained valuable insights and will not commit another crime. The objectives of sentencing include retribution, deterrence, and rehabilitation, among others. According to the submissions, these objectives have been met.
9. The trial court gave the appellant the minimum sentence as provided for under Section 8 (3) of the *Sexual Offences Act*. The Supreme Court has given guidance on minimum sentences under the *Sexual Offences Act* in *Republic v Joshua Gichuki Mwangi (Petition E018 of 2023)* [2024] KESC 34 (KLR). The court held that where a sentence is set in statute, the legislature has already determined the course unless declared unconstitutional. In this case, the twenty (20) year prison sentence is lawful and suitable.
10. I find no basis for interfering with the trial court’s decision on sentence. However, I note that the learned trial magistrate did not consider the period the appellant had been in custody during sentencing. In accordance with Section 333 (2) of the Criminal Procedure Code, the period spent in custody from the date of his arrest on 18<sup>th</sup> June, 2020 to 04<sup>th</sup> August, 2020, when he was released on bond, shall be taken into account in the sentence.
11. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 28<sup>TH</sup> DAY OF AUGUST, 2024.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:



Court Assistant: Hellen

ODPP: Mr. Mwakio

Appellant: John Wainaina Maina

