



**Otieno v Republic (Criminal Appeal E008 of 2024)
[2024] KEHC 14958 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E008 OF 2024
JR KARANJA, J
NOVEMBER 27, 2024**

BETWEEN

WILLIAM OCHIENG OTIENO APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant, William Ochieng Otieno , appeared before the Chief Magistrate at Kericho Charged with defilement, contrary to Section 8(1) as read with Section 8(3) of the Sexual Offence Act, in that on the 13th October, 2016 at around 1430hours at [Particulars Withheld] Kericho town, he defiled YAO, a child aged twelve (12) years. Alternatively, the Appellant committed an indecent act with the same child contrary to Section 11 (1) of the Sexual Offence Act.
2. After a full trial, the Appellant was convicted on the main count and sentenced to fifteen (15) years imprisonment. Being dissatisfied with the conviction and sentence the Appellant filed the present appeal on the basis of the grounds set out in the petition of appeal filed herein on 5th March, 2024, in which his complainant is targeted on the sentence only thereby indicating that this appeal is on sentence only.
3. Nonetheless, the appeal was canvassed by way of written submissions which were duly filed herein by both the Appellant and the Respondent state. It is notable that the arguments raised in the submissions are on both conviction and sentence but it would appear that the Appellant has since abandoned the grounds on conviction. It may also be noted that in its submissions the state conceded the appeal on the basis that a “voire dire” examination was not conducted by the trial court, but urged this court to order for a re-trial of the matter.
4. Although it may not be necessary to re-visit the entire evidence adduced at the trial in an appeal on sentence only, the prosecution evidence was in the opinion of this court. solid and credible in



establishing and proving the vital ingredients of defilement against the Appellant. The evidence by the child complainant (PW2) and the clinical officer (PW6) was sufficient and credible enough to establish the element of penetration and coupled with that of the child's mother (PW1) the evidence of the clinical officer further established the element of age by showing that the child was aged twelve (12) years at the material time of the offence.

5. Basically, the Respondent in conceding the appeal in effect conceded the appeal on both conviction and sentence. The reason for the concession was satisfactory to this court given that the failure to conduct a "voire dire" examination on the child complaint (PW2) was a fatal mistake for which this appeal would be allowed on both conviction and sentence without any need to order for a re-trial given that the Appellant has since the date of sentence (i.e 18th February, 2019) served six (6) years of the fifteen (15) years term imposed upon him by the trial court.
6. The term served by the Appellant upto this point is sufficient punishment which according to what he stated in this court has tremendously benefitted him in terms of being reformed, becoming a better and responsible person raring to be unleashed back to society to join the rest of the law abiding citizens in building the nation and uplifting the living standards of his community and family through the skills he has acquired while in prison. He brought to the court an artistic version of a maisonette house designed and created by himself to show and demonstrate to the court and the public the extent to which he has benefitted from his six (6) years stay in prison.
7. All we can do as a court is to wish the Appellant all the best and God's blessings now that this appeal whether on conviction or sentence or both is allowed in its entirety.

The Appellant unless otherwise lawfully held is hereby set at liberty forthwith "to fly high like a blue bird in the sky."

8. Orders accordingly.

HON. JR. KARANJAH

JUDGE.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER, 2024.

In the presence of; -

Appellant; - Present in Person

Mr. Karanja;- State Counsel

Mr. Simon Magwa ;- Court Assistant

