



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirwa v Republic (Criminal Appeal 142 of 2018)  
[2023] KEHC 439 (KLR) (27 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 439 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL APPEAL 142 OF 2018  
RN NYAKUNDI, J  
JANUARY 27, 2023**

**BETWEEN**

**NICHOLAS KIPKOSGEI KIRWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against sentence from the judgment delivered on 17th  
September 2018 by Hon D. Alego in KAPSABET CMCC 857 OF 2017)*

**JUDGMENT**

1. The appellant was charged with the offence of defilement contrary to section 8 (1) as read with section 8(3) of the *sexual offences act*. He was tried, found guilty and convicted to serve 20 years imprisonment by Hon D.A Alego on 17<sup>th</sup> September 2018.
2. Aggrieved with the sentence, the appellant filed the present appeal based on the following grounds;
  1. That, the imposed sentence is excessively harsh and unjust considering that, the appellant was first offender, he was a young man who needed a lesser sentence.
  2. That, the imposed sentence is excessive and does not go well with the provisions of the policy sentencing directives 2015 under paragraph 4:1.
  3. That, the appellant is remorseful and regrets his actions. He is repentant.
  4. That, the appellant worked tirelessly to support self and has potential if given another chance in life.
  5. That, the court considers my mitigation grounds and award a lesser sentence or substitute the remaining sentence with a non-custodial sentence or the court be pleased to order that the appellant serves in the Community Service Order.



6. That, the court considers the provisions of section 333(2) of the *Criminal Procedure Code* to be factored in his sentence.
3. The appellants case is that he condemns his actions and is remorseful. He has embraced fully the rehabilitative work offered in prison and is fully engaged in tailoring. With the knowledge experience and information acquired in the above area, he believes that he is fully rehabilitated and ready to be productive in building the nation. He sought to have his sentence reduced to a custodial one or a community service order.
4. Upon considering the mitigation of the appellant, the aggravating circumstances surrounding the offence, the gravity of the offence and the sentence imposed by the trial court, the court is not satisfied that the appellant's sentence warrants a review. The sentence is not in any way excessive and was commensurate to the offence committed. The only rider is the sentence to be reviewed in consonant with section 333(2) of the *Criminal Procedure Code* which gives credit to the period spent in remand custody. As a consequence the committal warrant be amended for the period of imprisonment to commence with effect from the 5<sup>th</sup> day of April 2017.
5. Save for that remedial action on sentence entire appeal be and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JANUARY 2023.**

.....

**R. NYAKUNDI**  
**JUDGE**

