



REPUBLIC OF KENYA



**Kidemi v Republic (Criminal Revision E459 of 2022)
[2023] KEHC 3475 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E459 OF 2022**

HM NYAGA, J

APRIL 27, 2023

BETWEEN

TOM MUSABIRE KIDEMI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant Tom Musabire Kidemi was charged with 12 counts: -

Count 1: Child pornography contrary to section 16(1) (a) as read with section 16(1) (e) of the *Sexual Offences Act*.

Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully showed audio visual pornographic material to VM a child aged 14 years with intention of encouraging the said child to engage in sexual acts.

Count 2: Child Prostitution contrary to section 15 (a) (e) (f) of the *Sexual Offences Act*.

Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully permitted VM a child aged 14 years to remain in his house for the purpose of exposing him to pornographic material with intention of encouraging the said child to engage in sexual Acts.

Count 3: Child pornography contrary to section 16(1) (a) as read with section 16(1) (e) of the *Sexual Offences Act* Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully showed audio visual pornographic material to EO a child aged 13 years with intention of encouraging the said child to engage in sexual acts.



- Count 4: Child Prostitution contrary to section 15(a) (e) (f) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully permitted EO a child aged 13 years to remain in his house for the purpose of exposing him to pornographic material with intention of encouraging the said child to engage in sexual Acts.
- Count 5: Child pornography contrary to section 16(1) (a) as read with section 16(1) (e) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully showed audio visual pornographic material to BMB a child aged 13 years with intention of encouraging the said child to engage in sexual acts.
- Count 6: Child Prostitution contrary to section 15(a) (e) (f) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully permitted BMB a child aged 13 years to remain in his house for the purpose of exposing him to pornographic material with intention of encouraging the said child to engage in sexual Acts.
- Count 7: Child pornography contrary to section 16(1) (a) as read with section 16(1) (e) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully showed audio visual pornographic material to AO a child aged 13 years with intention of encouraging the said child to engage in sexual acts.
- Count 8: Child Prostitution contrary to section 15(a) (e) (f) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully permitted AO a child aged 13 years to remain in his house for the purpose of exposing him to pornographic material with intention of encouraging the said child to engage in sexual Acts.
- Count 9: Promotion of Sexual Offences with a Child contrary to section 12(b) of [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County intentionally and unlawfully displayed pornographic material to AO a child aged 13 years with the intention of encouraging such sexual Acts.
- Count 10: Child pornography contrary to section 16(1) (a) as read with section 16(1) (e) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully showed audio visual pornographic material to BB a child aged 14 years with intention of encouraging the said child to engage in sexual acts.
- Count 11: Child Prostitution contrary to section 15(a) (e) (f) of the [Sexual Offences Act](#)
Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County knowingly and unlawfully permitted BB a child aged



14 years to remain in his house for the purpose of exposing him to pornographic material with intention of encouraging the said child to engage in sexual Acts.

Count Promotion of Sexual Offences with a Child contrary to section 12(b) of *Sexual Offences Act*

12: Particulars: On the diverse dates between December 2015 and December 2016 at [Particulars Withheld] Estate within Nakuru County intentionally and unlawfully displayed pornographic material to BB a child aged 12 years with the intention of encouraging the said child to engage in such sexual Acts.

2. He pleaded not guilty to all counts and the matter went into full trial. The trial court in the judgment dated on September 1, 2022 found the Applicant guilty of all the charges save for Counts 2,3,5,7 and 9.
3. On September 15, 2022 he was sentenced to 5 years' imprisonment on each count and they were to run concurrently.
4. The file has been placed before this court for Revision. The purpose of the revisionary powers of the High Court is to correct manifest irregularities or illegalities and give appropriate directions.
5. The High Court has supervisory powers over the subordinate courts and Tribunals. Section 362 of the *Criminal Procedure Code* donates the power thus,

“The High Court may call for and examine the record of any Criminal proceedings before any Subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

Section 367 *Criminal Procedure Code* provides that

“when a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed and the court to which the decision of order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith”.

6. The convict is not a first time offender. The prosecution told the court that the Applicant had previously been convicted in Criminal Case No. 100 of 2017 and sentenced to 15 years' imprisonment.
7. The trial court in its sentence indicated that the Applicant had previously been charged with counts 2, 3, 5 and 9 above.
8. The sentence is lawful and there are no justifiable grounds to interfere with the same.
9. The Applicant is therefore ordered to continue serving the remainder of his term as imposed by the trial court.

DATED, SIGNED & DELIVERED AT NAKURU THIS 27TH APRIL, 2023.

H.M. NYAGA

JUDGE

In the presence of:

C/A Jeniffer

Ms Murunga for state

Applicant present

