



REPUBLIC OF KENYA



**Muthui v Republic (Criminal Appeal 3 of 2020)  
[2023] KEHC 21571 (KLR) (26 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21571 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL APPEAL 3 OF 2020  
DAS MAJANJA, J  
JULY 26, 2023**

**BETWEEN**

**RICHARD MUTHUI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original ruling on sentence dated 15th October 2019 by Hon. V. Masivo, RM in Criminal (SO) Case No. 53 of 2019 at the Magistrate's Court at Nanyuki)*

**JUDGMENT**

1. The Appellant was charged with the offence of attempted defilement contrary to section 9(1) as read together with section 9(2) of the *Sexual Offences Act* before the Subordinate Court. The particulars were that on June 17, 2019, at Laikipia Central Sub-County, within Laikipia County, he attempted to cause his genital organ to penetrate the genital organ namely vagina of JN, a girl aged 13years old.
2. On June 19, 2019, the Appellant pleaded not guilty but on October 11, 2019, he changed his plea and a plea of guilty was entered by the trial court. He was convicted and sentenced on his own guilty plea to 15 years' imprisonment. He therefore appeals against the sentence only.
3. The Appellant relies on Mitigation Grounds of Appeal filed on December 16, 2019. He contends that he was a first offender, that he is remorseful and reformed and further a sole bread winner to his family. The applicant also states that he was not supplied with relevant documents by the prosecution to enable him defend himself.
4. Before I deal with the sentence, I propose to dispose of the ground that the Appellant was not supplied with documents to defence himself. The record reflects otherwise as it show that on July 16, 2019, the prosecution supplied the Appellant with the following documents; charge sheet, identity card, 4 witness statements, P3 medical form and the PRC form, disability document and GBV PeP document. He acknowledged receipt of these documents whereupon the case was fixed for hearing. I would also



point out that when the Appellant indicated that he wished to change his plea on October 9, 2019, the court adjourned the matter after explaining to him the punishment for the offence.

5. Since this appeal on the sentence, it must be recalled that the imposition of the appropriate sentence is within the discretion of the trial court. The manner in which the court may intervene is circumscribed by the principle that this court, as an appellate court, may interfere with the sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see *Wanjema v Republic* [1971] EA 493).
6. In the ruling on sentence, the trial magistrate outline the mitigating factor which the Appellant has reiterated in this appeal. He pointed out that court Appellant deserved a severe sentence, “owing to the fact that the offence was committing (sic) to a helpless and disble(d) girl who is recognised as vulnerable.” Under section 9(2) the minimum mandatory sentence prescribed for the offence of attempted defilement is 10 years imprisonment hence the trial court enhanced the sentence by 5 years.
7. I have considered the record and the facts surrounding the case, the facts narrated and which the Appellant did not contest were that the victim was child living with disabilities. She was unable to talk and had physical disabilities and was unable to move without physical assistance. She had been diagnosed with cerebral palsy when she was 4 months old and was in the custody of a special school. The trial magistrate was right to consider the special circumstances of the victim in enhancing the sentence.
8. The sentence is therefore affirmed and the appeal dismissed.

**DATED AND DELIVERED AT NANYUKI THIS 26<sup>TH</sup> DAY OF JULY 2023.**

**SIGNED AT NAIROBI**

**D.S. MAJANJA**

**JUDGE**

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**A.K. NDUNG’U**

**JUDGE**

