



**Otieno v Republic (Criminal Appeal E034 of 2023)  
[2023] KEHC 26640 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26640 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E034 OF 2023  
KW KIARIE, J  
DECEMBER 20, 2023**

**BETWEEN**

**DENIS OCHIENG OTIENO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. case NO. E020 of 2020 of the Senior Principal Magistrate's Court at Oyugis by Hon. C.A. Okore–Principal Magistrate)*

**JUDGMENT**

1. Denis Ochieng Otieno, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence are that on the 17<sup>th</sup> of November 2020 in Rachuonyo South Sub-County within Homa Bay County, intentionally and unlawfully caused his penis to penetrate the vagina of MAO, a child aged eleven (11) years.
3. The appellant was sentenced to twenty (20) years' imprisonment. He was aggrieved and filed this appeal against the sentence.
4. The appellant was in person. He raised grounds of appeal as follows:
  - a. That the court use its inherent powers to substantially do justice by reducing the sentence of 20 years to any manageable sentence.
  - b. That this court be lenient and review the sentence of 20 years to a lesser jail term.
5. The appeal was opposed by the state no grounds of opposition or submissions were filed.



6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
7. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R v Shershewity* (1912) C.CA 28 T.LR 364.

8. Section 8(3) of the *Sexual Offences Act* provides:
  - (3) 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.
9. The sentence meted out to the appellant cannot be described as harsh and excessive. This was a legal sentence as prescribed in the *Sexual Offences Act*. I have no basis to interfere with it.
10. From the foregoing analysis of the evidence on record, I find that the appeal lacks merit and the same is dismissed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 20<sup>TH</sup> DAY OF DECEMBER 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

