



REPUBLIC OF KENYA



**KENYA LAW**  
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**Martin v Republic (Criminal Appeal 009 of 2020)  
[2022] KEHC 11404 (KLR) (11 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 11404 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL 009 OF 2020  
GMA DULU, J  
AUGUST 11, 2022**

**BETWEEN**

**JAMES KIMEU MARTIN ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. J.O MAGORI in Makindu Principal Magistrate's Court (S.O) Case No.84 of 2019 pronounced on 13th November, 2019)*

**JUDGMENT**

1. The appellant was charged in the Magistrate's court with defilement Contrary to section 8(1) as read with section 8(3) of the *Sexual Offences act* No. 3 of 2006. The particulars of the offence were that on diverse dates between 8<sup>th</sup> May, 2018 and 9<sup>th</sup> October, 2018 at Kivungu Village in Nzau Subcounty within Makueni County intentionally and unlawfully caused his genital organ namely penis to penetrate the female genital organ namely vagina of BKK ( name withheld) a child aged 14 years.
2. In the alternative, he was charged with committing an indecent act with a child, contrary to section 11(1) of the *Sexual Offences Act*, the particulars of which being that between the same dates and at the same place, intentionally and unlawfully touched the vagina of BKK a child aged 14 years using his penis.
3. He initially pleaded not guilty to the charge and was also said, for some time, to be mentally unfit to stand trial.
4. Later however, after the Government Analyst Irene Mwaringa testified as PW1, and produced the DNA test report on the paternity of the child of the victim, the appellant changed and pleaded guilty to the charge of defilement, was convicted and sentenced to serve 20 years imprisonment.



5. He has now come to this court on appeal on the following grounds;
  - i. That he pleaded guilty to the charge.
  - ii. That he had mental disease which caused all the failures of his decisions and activities.
  - iii. That he is too young to serve the years behind bars.
  - iv. That he is a first offender who needs leniency on sentence.
  - v. That he is deeply remorseful, repentant and regrets his action.
  - vi. That he prays for non-custodial sentence or an option for a fine.
  - vii. That he is ready to comply with any other option the court may deem fit in his circumstances.
6. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by the appellant and those filed by the Director of Public Prosecutions.
7. The appellant has appealed on sentence, but him being a layman, I will have to consider the plea of guilty as well, whether it was unequivocal.
8. The appellant was recorded to have pleaded guilty to the charge in a clear way, facts were then given by the prosecutor and he confirmed the truth of the facts. He was then convicted. In my view, the requirements for taking a plea of guilty as enumerated in the case of *Adam v Republic* (1973) EA were satisfied. It was an unequivocal plea of guilty and the conviction for the offence of defilement was thus proper.
9. With regard to the sentence imposed, the sentence imposed by the trial court was the minimum statutory sentence, provided by law.
10. Though the appellant was a first offender, and he pleaded guilty to the charge, and he was a fairly young man in his early 20s, in my view, the trial court had no choice but to impose a 20 years prison sentence.
11. I appreciate the mitigating factors, but the offence is a serious offence and the sentence imposed being lawful, I will uphold the sentence.
12. I thus dismiss the appeal on sentence, and uphold the sentence of 20 years imprisonment imposed by the trial court.

Right of appeal explained

**DATED SIGNED AND DELIVERED IN OPEN COURT THIS 11<sup>TH</sup> AUGUST, 2022 AT MAKUENI.**

**GEORGE DULU**

**JUDGE**

