



**Odhiambo v Republic (Criminal Appeal E002 of 2022)  
[2022] KEHC 15582 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15582 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E002 OF 2022  
RE ABURILI, J  
NOVEMBER 21, 2022**

**BETWEEN**

**GEORGE IAN ODHIAMBO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An Appeal against the Judgment, conviction and sentence by Hon CN Sindani, Principal Magistrate on 28.1.2021 at Ukwala PM's Court in Cr. Sexual Offence case No 29 of 2020)*

**JUDGMENT**

1. On January 28, 2020, the appellant herein George Ian Odhiambo was convicted of the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* vide Ukwala PM Cr SO 29/2021 and sentenced to serve 20 years imprisonment. He had pleaded not guilty.
2. Aggrieved by the conviction and sentence, the appellant filed his appeal on February 5, 2022 setting out the following grounds of appeal:
  1. That the appellant pleaded not guilty to the impended charges.
  2. That the learned magistrate erred in law and facts by convicting and sentencing the appellant, without considering that the same case had a lot of contradiction, which cannot amount conviction and sentence.
  3. That the learned magistrate erred in law and fact by convicting and sentencing the appellant without considering that the DNA report was not prepared to prove the said spermatozoa if it was of appellant's.
  4. That the learned trial magistrate erred in both law and fact by convicting and sentencing the appellant twenty (20) years imprisonment which mandatory



minimum sentence according to the Sexual Offences Act No 3 of 2006 which is contrary to the bill of rights of fair trial to an appellant as pursuant to the Constitution of Kenya 2010.

5. That since I cannot recall all evidence that was adduced during the trial proceedings. I now beg this honourable court to furnish me with the full certified trial records in order to enable me elect more reasonable grounds of appeal.
6. That the appellant begs this honourable court to consider him as a pauper and section 113 of Appellate Jurisdiction Act be applied to the same due to the financial status of the same.
3. The appeal was admitted to hearing on September 23, 2022 and the court directed the appeal to be canvassed by way of written submissions which the parties complied.
4. The appellant filed his written submissions on November 1, 2022 whereas the ODPP filed written submissions on October 3, 2022 supporting the conviction and sentence imposed on the appellant.
5. When the appeal came up on November 1, 2022 for mention to fix a judgment date, the appellant sought to withdraw his appeal against conviction and urged the court to consider reducing his sentence only. The application was allowed. He submitted that he was 27 years old, that he was challenging the mandatory minimum sentence imposed on him. He admitted to have committed the offence saying he was cheated in the lower court to lie that he never committed the offence yet he did it and that the evidence against him was true. He mitigated saying that he had a wife and 2 children aged 3 years and 5 months old respectively and sought for forgiveness.
6. He pleaded for lenient sentence so that he could return home and help his people.
7. That he had reformed while in jail and that he was foolish to seduce a child and he had since learnt his lessons in jail.
8. The prosecution submitted that the sentence imposed was lawful and deserved. That the convict was a coach to the child and he abused the trust hence the court should uphold the trust.
9. That circumstances under which the offence was committed are that the victim was a standard eight pupil and the appellant used to coach her. So on the material day, she left home to go for coaching and when she reached the way, she met her teammates who advised her that on that day there would be no training as they had a game to be played by the boys. She therefore went to watch the game but the game was abandoned when the police intervened in an assault case where a boy beat a girl.
10. The coach then called the complainant saying he wanted to talk to her and he told her to go to his house after claiming that he had spoken to her mother who had allegedly consented to her going to his home where she would meet her mother.
11. He led her to some house where he forced her to cook for him and another boy then he forced her to sleep there, grabbed her, tore her dress and as he pushed her legs aside and had sex with her, she cried then he gave her back her panty and she dressed up and he slept. She remained until morning when he left her in that house and went to the market.
12. PW3 the child officer who examined the victim confirmed that she had been defiled when she examined her. She was still in pain and had blood on her pant and lacerated labia majora of the vagina. There was also semen on the vagina on the lacerated areas, hymen was broken.



13. In mitigation, the appellant told the court that the complainant just wanted to separate him with his wife.
14. I have considered all the above circumstances under which the offence was committed.
15. Although the appellant claimed that the complainant had framed him, he has owned up and stated that he committed the offence and that he was cheated to deny committing the offence.
16. The appellant was a coach to the complainant who was an innocent girl and who did not even realize that she had been defiled, owing to the shock that she went through with the appellant tearing into her clothing and her body despite her resistance. The appellant led her to his house upon lying to her that her mother had authorized him to go with her to his house.
17. The appellant deceived the innocent girl. He reaped off her innocence and dignity. He has a family yes but he ought to have known of the consequences of his action. He is over 27 years old and cannot pretend to be ignorant of the law.
18. There are boundaries for persons who are placed in trust of children. He breached that trust and preyed on the innocent child.
19. Despite the appellant now changing tact and invoking the Francis Muruatetu case, this court finds that the principles Muruatetu decision was not meant to cushion sex pest offenders but to reaffirm the discretion of the court in sentencing, having regard to the circumstances of each case, and to allow the convicts to mitigate.
20. In the instant appeal, I do not find any mitigating circumstances that can persuade me to reduce the sentence of 20 years imprisonment imposed, which sentence was lawful and deserved against the appellant who had no mercy on an innocent child.
21. For the above reason, I find this appeal against sentence devoid of any merit. It is hereby dismissed.
22. This file is closed.
23. I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2022.**

**RE ABURILI**

**JUDGE**

