



REPUBLIC OF KENYA



**Odhiambo v Republic (Criminal Appeal E003 of 2022)  
[2022] KEHC 15565 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15565 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E003 OF 2022  
RE ABURILI, J  
NOVEMBER 21, 2022**

**BETWEEN**

**ALFRED ODHIAMBO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An Appeal against the Judgment, conviction and sentence by Hon. M. Mwangi, Resident Magistrate on 18.11.2021 at Siaya CM's Court in Sexual Offence case No. 13 of 2020)*

**JUDGMENT**

1. The appellant Alfred Odhiambo was the accused before the lower court in Siaya CM Cr. SO. 13/2020 where he 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. He had pleaded not guilty to the charge and upon conviction, he was sentenced to serve twenty (20) years imprisonment on 2/2/2022 by Hon. Margaret Wambani, Chief Magistrate.
3. The appellant was aggrieved by the conviction and sentence so he filed this appeal on 8/2/2022 setting out the following grounds of appeal:
  1. That the trial court failed to observe that the sentence imposed is/was manifestly harsh and disproportionate.
  2. That the court be pleased to consider that the ingredients forming the offence was not proved beyond reasonable doubt.
  3. That the court be pleased to consider that the investigation tended was shoddy.
  4. That the court be pleased to consider any aspect or condition that shall not occasion prejudice.



5. That appellant hereby beseeches the superior court to indulge into the same and or be pleased to reduce the sentence proportionally as enshrined in the Article 50(2) (p) of the Constitution.
6. That the Appellant wishes to be present at the hearing of this appeal and or be supplied with trial record to enable him erect more grounds.
4. The appeal was admitted to hearing on 23/9/2022 after the lower court record was availed on 4/7/2022 when this court was on leave, followed by the statutory recess. Upon admission of the appeal, the court directed parties to file written submissions to canvass the appeal which they did. The appellant filed his submissions on October 25, 2022 whereas the Respondent ODPP filed written submissions opposing the appeal on 1/11/2022.
5. When the appeal came up for mention to fix a judgment late on 1/11/2022, the appellant withdrew his appeal against conviction and only urged this court to consider his appeal on sentence and mitigated saying that he was remorseful, that his family depended on him, that he seeks for forgiveness, he is 42 years old and his first born child was born in 2003. He urged the court to only help reduce the sentence imposed on him as he was not challenging his conviction.
6. The Prosecution led by Mr. Kakoi submitted that the State is satisfied with the sentence imposed considering the manner in which the offence was committed hence the sentence should be sustained.
7. The court allowed the withdrawal of the appeal against conviction and reserved this appeal for judgment on sentence alone.
8. I have considered the Plea by the appellant for reduction of sentence in line with the recent decision from the High court at Machakos in Constitutional Petition No. E017 OF 2022 and applying the principles set out in the Francis Muruatetu & another v Republic [2017] eKLR decision by the Supreme Court on the mandatory nature of sentences that take away the discretion of the trial courts in sentencing and denying the accused persons the opportunity to mitigate before being sentenced.
9. The circumstances under which the offence was committed are that the victim was a 15 year old girl who had gone to fetch some fruits near her grandmother's house on 24/2/2020 when she met the appellant who worked for her grandmother who accosted her carrying a panga and while she was up a guava tree and threatened to cut her if she screamed. He held her and dragged her to where he normally slept inside her grandmother's house, threw her onto the bed and defiled her, then he released her to go away. He also told her that he would kill her if she told anyone. The victim called her mother and informed her of what had happened to her and she was taken to hospital, examined and treated and the appellant was later arrested and charged with the offence after the doctor examined the complainant and confirmed that she had been defiled first 45 minutes earlier.
10. The victim was aged 15 years as at February 24, 2020 as she was born on 17.6.2005.
11. Before sentencing, the appellant herein mitigated and asked for help saying he had children at home and they are small children, 2 daughters and 2 sons. He has a wife and his widowed mother. He is the sole breadwinner. He prayed for a non-custodial sentence.
12. The trial court then ordered for a social inquiry report which it considered before sentencing him. I have considered that report too dated December 16, 2021.
13. The victim was traumatized by the incident, according to the Presentence report. Her school performance had dropped and she appeared disturbed at the mention of the appellant.
14. His family speaks well of him. He is a first offender.



15. Having considered all the above circumstances and mitigation, I am unable to find any reason why I should interfere with the lawful sentence imposed on the appellant as stipulated in Section 8(3) of the *Sexual Offences Act*.
16. The appellant threatened to kill the victim of defilement, a young girl aged 15 years old while he was 42 years old and she was left traumatized. The appellant deserved the sentence imposed which though the minimum mandatory, but lawful and the trial court did consider his mitigations and aggravating circumstances. I find no reason to interfere with the discretion exercise by the trial court in sentencing a sex pest who threatened to kill his victim. oblivious of the dire consequences. His mitigations have no persuasion.
17. I find the appeal against sentence not merited. It is hereby dismissed.
18. This file is hereby closed.
19. I so order.

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

**R.E. ABURILI**

**JUDGE**

