



**Mliwa v Republic (Criminal Appeal E006 of 2020)  
[2021] KEHC 9783 (KLR) (12 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E006 OF 2020  
JO NYARANGI, J  
FEBRUARY 12, 2021**

**BETWEEN**

**SABASTIAN CHOLA MLIWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Appellant herein was charged before Hon. E.Nyakundi Resident Magistrate Wundanyi Law Court of the offence of defilement contrary to section 8(1) as read with section 8(a) of the [sexual offences act](#) no 3/2006. Having entered a plea of guilty, he was on 19.12.19 sentenced to 30 years imprisonment. The court was however cognizant of the fact that the offence the Appellant was convicted of attracts a life imprisonment term. The trial court nevertheless indicated that it was persuaded to reduce the sentence because of the mitigation on record.
2. Aggrieved by the said conviction and sentence, the appellant lodged a petition of appeal seeking revision of the sentence. He stated that he was under the influence of alcohol when he committed the offence and that he was ready to reform.
3. When the matter came up for hearing, the court ordered for pre-sentencing social inquiry report. The victim impact report dated 8.2.21 reveals that the local administration and the community at large are not comfortable with the court in reducing sentence or releasing the applicant on non-custodial sentence. That the victim's family is still bitter and the villager's memory is fresh and that they are not ready to forgive the applicant.
4. During the hearing, the Appellant pleaded for leniency. He abandoned his appeal against conviction. He claimed that he had reformed and that if released he will be a law abiding citizen.
5. On the other hand, the state vehemently opposed the application stating that the offence committed was serious deserving life imprisonment and that the victim is still traumatized.



6. I have considered the appeal/application seeking review of the sentence herein. It is true that the offence attracts a sentence of life imprisonment. However, courts can exercise discretion by giving a lesser sentence subject to mitigation on record.
7. After considering the seriousness of the offence and taking into account that the 9 years old (victim) boy who was sodomized is still traumatized and yet to recover, it will be unreasonable to even imagine a non-custodial sentence. However, taking into consideration the mitigation that the Appellant is a first offender and that he saved court's precious time by pleading guilty, I am inclined to review the period of sentence from 30 years to 20 years.
8. Accordingly, the sentence of 30 years imprisonment is hereby substituted with a sentence of 20 years imprisonment to be calculated from the date of sentence

**RIGHT OF APPEAL 14 DAYS.**

**DATED, SIGNED AND DELIVERED THIS 12TH DAY OF FEBRUARY 2021**

**J.N. ONYIEGO**

**JUDGE**

**J.ONYIEGO- J**

