



REPUBLIC OF KENYA



KENYA LAW
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**Nyongesa alias Okello v Republic (Criminal Appeal E089 of 2023)
[2025] KEHC 2383 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2383 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL APPEAL E089 OF 2023
JR KARANJA, J
FEBRUARY 6, 2025**

BETWEEN

SYPRIAN NYONGESA ALIAS OKELLO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the judgment and decision by Hon. S.M. Mookua, Chief Magistrate in the Kapsabet Chief Magistrate's Court Criminal Sexual Offence Case No. E001 OF 2020 dated 27th July 2023)

RULING

1. The Applicant's application dated 11th September 2023 is essentially for review of the sentence imposed on him by the Chief Magistrate at Kapsabet in Kapsabet CMSO No. E001of 2020 wherein he was charged with defilement, Contrary to Section 8[1] read with Section 8[4] of the [Sexual Offences Act](#).
2. It was after a full trial that the Applicant was convicted on the main count of defilement and sentenced to twelve [12] years imprisonment. The alternative count of committing an indecent act with the said child Contrary to Section 11[1] of the [Sexual Offences Act](#) was therefore rendered obsolete.
Being aggrieved by the sentence, the Applicant moved this court vide the Notice of Motion dated 11th September 2023, for a review of the sentence.
3. The grounds upon which the application is made are akin to a plea in mitigation for leniency. The submissions in support of the application are framed as if this were an appeal on conviction and sentence. However, the Applicant when he appeared in court in person for the hearing of the matter clarified that he was not opposed to the conviction and the sentence meted out against him by the trial court and that all he desired was a reduction of the sentence.



4. At the hearing of the application, the Applicant prayed for reduction of the sentence as his family depends on him. He said that he was a water vendor in Nandi Hills Town at the material time of the offence. The State/ Respondent, represented by the Learned Prosecution Counsel, Ms. Asiyu, opposed the application and submitted that the Applicant was sentenced under Section 8[4] of the *Sexual Offences Act*, which provides for a minimum mandatory sentence of fifteen [15] years.
5. The prosecution counsel further submitted that the child victim was aged sixteen [16] years and a school going girl who stayed with the Applicant when he took advantage of her vulnerability. That, the trial court did not take heed of the mandatory nature of the aforementioned provision of the law and imposed a twelve [12] years imprisonment sentence which was suitable in the circumstances of the case.
6. The prosecution counsel submitted and contended that this court lacks the jurisdiction to reduce the sentence imposed by the trial court on the basis of decision by the Supreme Court in Republic Vs. Joshua Gichuki Mwangi [Petition No. E018 of 2023]
The Respondent therefore prayed for the dismissal of the application.
7. Despite being provided with a copy of the aforementioned decision to decide whether or not to proceed with this application, the Applicant chose to soldier on, a decision which has led him to his “water-loo” moment courtesy of the very decision which has now brought the fall of his present application by divesting this court of the jurisdiction to interfere with the impugned sentence by reducing it.
8. Section 8[4] of the *Sexual Offences Act* in effect provides for a minimum sentence of a mandatory nature, but the trial court exercised a discretion which it did not have by imposing a sentence of twelve [12] years imprisonment instead of the prescribed minimum sentence of fifteen [15] years imprisonment. As it were, the trial court passed an unlawful sentence which was for the benefit of the Applicant. He should be grateful for that error.
9. In sum, the present application is devoid of merit and is hereby dismissed.

DELIVERED AND DATED THIS 6TH DAY OF FEBRUARY 2025

HON. J. R. KARANJAH,

JUDGE

