Cheruiyot v Republic (Criminal Appeal E022 of 2023) [2025] KEHC 4827 (KLR) (23 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4827 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CRIMINAL APPEAL E022 OF 2023

JK NG'ARNG'AR, J

APRIL 23, 2025

BETWEEN

DENNIS KIPKIRUI CHERUIYOT .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(From the conviction and sentence in Sexual Offence Case Number E004 of 2022 by Hon. Muleka E. in the Senior Principal Magistrate's Court in Sotik)

JUDGMENT

1. The Appellant was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. The particulars of the charge were that on 10th January 2022 in Konoin Sub-County within Bomet County, he intentionally caused his penis to penetrate the vagina of CC, a child aged 3.5 years.

2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on 10th January 2022 in Konoin Sub-County within Bomet County, he intentionally touched the vagina of CC, a child aged 3.5 years with his penis.

3. The Appellant pleaded not guilty to the charges before the trial court and a full hearing was conducted. The prosecution called eight (8) witnesses in support of its case and closed their case. The Appellant gave sworn testimony and did not call any witness.

4. In a Judgment dated 27th April 2023, the trial court convicted the Appellant of the charge of defilement contrary to section 8(2) of the *Sexual Offences Act* and sentenced the Appellant to serve life imprisonment.

5. Being aggrieved with the Judgment of the trial court, Dennis Kipkirui Cheruiyot through a home-made Petition of Appeal appealed against his conviction and sentence on the following grounds reproduced verbatim:-

    I. That the trial Magistrate erred in law and fact by failing to realize that the main ingredients of the offence were not proved to the required legal standard.

    II. That the Prosecution relied on uncorroborated evidence.

    III. That the Prosecution's evidence was marred with contradictions, inconsistencies, discrepancies and glaring gaps.

    IV. That the trial Magistrate erred in law and fact by failing to realize that the Prosecution's evidence was not sufficient for a prima facie case to be established against him.

    V. That the trial Magistrate erred in law and fact by rejecting his plausible defence without any further explanation.

6. The Appellant filed further grounds of Appeal reproduced verbatim as follows:-

    I. That the learned trial Magistrate erred in law and fact by failing to take into account that he failure of the court to assign a learned counsel to the Appellant was prejudicial.

    II. That the learned trial Magistrate erred in law and fact by rejecting his alibi defence.

    III. That the learned trial Magistrate erred in law and fact by imposing a harsh and inhumane sentence.

7. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh and come to my own independent findings. See Mark Ouiruri Mose vs Republic (2013) eKLR.

8. I now proceed to consider the case before the trial court in summary and the parties' submissions of the Appeal in the succeeding paragraphs.

The Respondent/ Prosecution's Case

9. It was the Prosecution's case that the Appellant defiled CC (PW2) on 10th January 2022. PW2 testified that on the material day, the Appellant wronged her (and pointed to her private parts) and that it was painful.

10. Kennedy Kiptoo Korir (PW6) who was the clinical officer from Koiwa Health Centre testified that he examined PW2 on the material day (10th January 2022) and found that her private parts had lacerations, a broken hymen and had bleeding from her vagina. PW6 further testified that he also found spermatozoa and epithelial cells in the victim's (PW2) genitalia.

11. PW6 further testified that he examined the Appellant and found that he had spermatozoa which indicated that the Appellant had engaged in sexual intercourse at least 4 hours post examination. PW6 concluded that PW2 had been defiled.

12. The Respondent/Prosecution filed their Notice to Concede dated 13th November 2024. The Respondent submitted that the conviction was unsafe because the trial court failed to conduct a voire-dire examination on the victim. They further submitted that it was vital for the trial court to conduct the voire-dire examination since the evidence on identification was in doubt.

13. It was the Respondent's submission that if the identity of the Appellant had been established, it beat logic why Kepha Kipngeno (PW4) and EK (PW5) had been arrested. It was their further submission that the failure to call Eddy (whom the victim's mother claimed to have left the victim with) watered down their case.

14. The Respondent submitted that a DNA test ought to have carried out between the victim and the Appellant to conclusively establish the positive identification of the Appellant.

The Accused/Appellant's Case

15. The Appellant (DW1) denied committing the offence and had been framed. He stated that on the material day, he was not at the scene of the offence as he had gone to pick tea leaves with his wife. DW1 further testified that when he came back, PW1 asked him what he had done to her child (PW2) and upon further inquiry, he was told that PW2 had been defiled.

16. It was DW1's testimony that he was arrested alongside two other suspects and taken to Mogogosiek Police Station. It was his further testimony that out of the three suspects, he was the only one who was medically examined.

17. DW1 testified that the victim (PW2) was aged 3.5 years and it was impossible for her to positively identify him due to the lapse of time (10 months).

18. The Appellant filed his written submissions on 13th November 2023 and submitted that penetration of the victim and his positive identification were not proved beyond reasonable doubt. He further submitted that PW1 ought to have been treated as a hostile witness as her testimony was not truthful.

19. It was the Appellant's submission that the Prosecution's evidence was contradictory, inconsistent, malicious and fabricated. It was his further submission that no voire-dire examination on PW1 and it was not established that she was intelligent enough to be give sworn evidence.

20. The Appellant submitted that he was prejudiced as the trial court did not provide him with an advocate during the trial. That he was a layman with no understanding of the law. He further submitted that his rights under Article 50 (2) (h) of the *Constitution* had been violated and relied on Joseph Mwaura Macharia v Republic [2018] KEHC 6068 (KLR).

21. It was the Appellant's submission that the trial court wrongly rejected his alibi defence. It was his further submission that the circumstances of the case did not call for a life sentence.

22. I have gone through and given due consideration to the trial court's proceedings, the Petition of Appeal filed on 15th May 2023, the Amended Grounds of Appeal and Appellant's written submissions both filed on 13th November 2023 and the Respondent's Notice to Concede dated 13th November 2023. The following issues arise for my determination:-

    i. Whether there were procedural issues affecting the Appellant's right to a fair trial.

    ii. Whether the Prosecution proved its case beyond reasonable doubt.

    iii. Whether the Appellant's defence placed doubt on the Prosecution case.

    iv. Whether the sentence preferred against the Appellant was harsh.

i. Whether there were procedural issues affecting the Appellant's right to a fair trial.

23. It was a ground of the Appeal that the Appellant was not provided for an advocate by the trial court and hence his rights to a fair trial as envisaged under Article 50 of the *Constitution* were infringed and he suffered prejudice. Article 50(2) (h) of the *Constitution* of Kenya provides as follows:-

> Every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.

24. However, such right to have an advocate assigned to an Accused was not absolute and had limitations. The Court of Appeal in David Njoroge Macharia v Republic [2011] KECA 406 (KLR) held:-

> "Article 50 sets out a right to a fair hearing, which includes the right of an accused person to have an advocate if it is in the interests of ensuring justice. This varies with the repealed law by ensuring that any accused person, regardless of the gravity of their crime may receive a court appointed lawyer if the situation requires it. Such cases may be those involving complex issues of fact or law; where the accused is unable to effectively conduct his or her own defence owing to disabilities or language difficulties or simply where the public interest requires that some form of legal aid be given to the accused because of the nature of the offence." (Emphasis mine)

25. I have carefully gone through the trial court proceedings and I have noted that the Appellant was not provided for an advocate by the trial court and neither was he informed of his right to have an advocate bearing in mind the nature of the offence and the sentence it carried. In my view, this was a great omission on part of the trial court as such obligation was enshrined in Article 50(2) (h) of the *Constitution* of Kenya.

26. Having said that, the sole question that now arose was whether or not the Appellant suffered any injustice or prejudice. Having gone through the trial court proceedings, I have noted that the Appellant participated in his trial from the onset to it conclusion. He was present in court when all eight prosecution witnesses testified and he cross examined all of them. In his defence, the Appellant gave sworn testimony. There is nothing in the trial court record that would indicate that the Appellant suffered prejudice as a result of not being represented by an Advocate, He understood the charge he faced and fully participated in his trial and even gave his defence. This ground of Appeal was an afterthought and I dismiss it. I concur with Kamau J. in Okudo v Republic [2023] KEHC 22873 (KLR), where she held:-

> "Having said so, the question that now arose was whether or not he suffered any injustice and/or there was an infringement on his right to fair trial. It must be appreciated that it not always that such omission must cause an accused person injustice as it can be remedied."

ii. Whether the Prosecution proved its case beyond reasonable doubt.

27. It is trite law that for the offence of defilement to be established, the age of the victim, penetration and positive identification or recognition of the offender have to be proved.

28. Regarding the age of the victim, Rule 4 of the Sexual Offences Rules of Court 2014 provides that:-

> When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.

29. I have looked at the Birth Certificate (P.Exh 1) produced by the Investigating Officer (No. 96458 PC Linet Ngeiywa) (PW8) and it indicated that PW2 was born on 23rd January 2019. It is my finding that at the time of the commission of the offence, PW2 was aged 2 years old.

30. Before I proceed to the next ingredient, the Appellant and the Respondent in their submissions and Notice to Concede respectively submitted that the trial court failed to conduct voire dire examination on the victim and that such omission was fatal. Voire dire was explained by the Court of Appeal in the case of Macharia vs. Republic (1976) KLR 209, as:-

> " It [voir dire] must be a preliminary examination of a witness by the magistrate in which the witness is required "to speak the truth" with respect to questions put to him, or her, so that the magistrate can discover if he, or she, is competent (e.g. she is not too young, or she is not insane) to give evidence and should be sworn or affirmed (according to whether or not she is a Christian, or of any other, or no, faith, and understands the nature and obligation of an oath to tell only the truth)....."

31. Further in Maripett Loonkomok v Republic [2016] KECA 520 (KLR), the Court of Appeal held that:-

> " ....Section 19 of the *Oaths and Statutory Declarations Act* is concerned with the reception and admissibility of evidence of a child of tender years. The section starts by declaring that where the child does not, in the opinion of the court understand the nature of an oath, his evidence may nonetheless be received though not given upon oath. But that evidence shall only be received if, again in the opinion of the court the child is possessed of sufficient intelligence to justify the reception of the evidence and also if, the child understands the duty of speaking the truth........
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> ....It follows from a long line of decisions that voir dire examination on children of tender years must be conducted and that failure to do so does not per se vitiate the entire prosecution case. But the evidence taken without examination of a child of tender years to determine the child's intelligence or understanding of the nature of the oath cannot be used to convict an accused person. But it is equally true, as this Court recently found that;
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> > " In appropriate case where voir dire is not conducted, but there is sufficient independent evidence to support the charge... the court may still be able to uphold the conviction." (Emphasis mine)

32. From the above, it is the trial court's duty to ensure that a minor of tender years understands the meaning of an oath and the importance of speaking the truth before one testifies. I have noted from the trial court proceedings that the trial court did not conduct the voire-dire examination on PW2. As seen from the authorities above, such omission by the trial court was not fatal and a conviction could still be upheld if there was other independent and sufficient evidence that proved the commission of the offence. I therefore disagree with the Appellant's and Respondent' view that such an omission was fatal to the Prosecution's/Respondent's case.

33. Regarding evidence on identification, there was no eye witness testimony and the only person who witnessed the alleged assault was the victim (PW2). PW2 identified the Appellant as the one who had “wronged her”. When she (PW2) was cross examined, her testimony remained unshaken as she reiterated that it was the Appellant who defiled her and that they were home alone.

34. Tabitha Yegon (PW3) testified that she was PW1 and PW2’s neighbour and that he knew the Appellant as he was a tenant in one of PW1’s rental houses. EK (PW5) who was the victim’s brother testified that the Appellant was a neighbour. The Appellant in his cross examination testified and confirmed that he was a tenant in one of PW1’s (Jackline Kurgat) rental houses. This testimony when tied together with the testimonies of the victim (PW2), Tabitha Yegon (PW3) and EK (PW5) confirmed to this court that the Appellant and the victim were not strangers as they were well known to each other by virtue of being neighbours. This to me was evidence of recognition.

35. From the Prosecution evidence, it was evident that the Appellant was arrested with two other suspects, i.e. Kepha Kipngeno (PW4) and EK (PW5). The Appellant faulted their release and stated that they should have been equally charged alongside him. Kepha Kipngeno (PW3) testified that on the material day, he went to school and when he went back home, he found the victim (PW2) standing and his mother told him that she had been defiled. He testified that he was arrested alongside the Appellant and EK (PW5). His testimony remained uncontroverted upon cross examination.

36. EK (PW5) testified that on the material day, he was in school and when he went back to pick a book from home, he found PW2 with Tabitha (PW3). That he went to school and when he came back, he was arrested alongside the Appellant and PW4 and taken to hospital where they were examined and released. His testimony remained uncontroverted during cross examination.

37. It was clear that the Appellant, Kepha Kipngeno (PW4) and EK (PW5) were medically examined. In my view, the possibility of mistaken identity shall be determined by the medical evidence presented in the trial court.

38. Andrew Kipsiele Chepkwony (PW7) testified that he was the Chief of Mosonik Location and that on the material day, he arrested and took the Appellant, Kepha Kipngeno (PW4) and EK (PW5) to Mogogosiek Hospital for medical examination. Kennedy Kipruto Korir (PW6) who was the clinical officer testified that he examined the Appellant, PW4, PW5 and the victim (PW2). It was his testimony that he found spermatozoa in the victim’s and Appellant’s genital organs and further that the spermatozoa on the Appellant’s genital organ indicated that he had been engaged in sexual intercourse.

39. From PW7’s testimony, there were no findings on Kepha Kipngeno (PW4) and EK (PW5). The only findings were that of the Appellant and from PW7’s testimony, both the Appellant and the victim were found with spermatozoa in their genital organs. PW5 produced the Appellant’s treatment notes as P.Exh 5 and it indicated that the Appellant was found with spermatozoa in his genital organ. This in my view, provided a direct link between the Appellant and the deceased in relation to the commission of the offence. It is therefore my finding that the Appellant was positively identified and the possibility of mistaken identity was extinguished by the medical evidence as illustrated above.

40. With regards to penetration, Section 2 of the *Sexual Offences Act* defines penetration as the partial or complete insertion of genital organs into the genital organs of another person. The Prosecution has to prove penetration or act of sexual intercourse to sustain a charge of defilement.

41. Penetration can be proved through the evidence of the victim corroborated by medical evidence. It should however be noted that if the medical evidence is insufficient, courts can convict solely on the evidence of a victim provided they believe the testimony of the victim and record such reasons.

42. In the instant case, I shall carefully evaluate the victim's testimony and the medical evidence tendered.

43. CC (PW2) testified that on the material day (10th January 2022), the Appellant "wronged her". The trial court noted that the victim pointed to her private parts. It is important to note that for victims of defilement who are of tender years, courts have accepted the use of the words "bad manners" or "tabia mbaya" as definitions of defilement. In the case of Muganga Chilejo Saha v Republic [2017] KECA 359 (KLR), the Court of Appeal held:-

> "Naturally children who are victims of sexual abuse are likely to be devastated by the experience and given their innocence, they may feel shy, embarrassed and ashamed to relate that experience before people and more so in a court room. If the trend in the decided cases is anything to go by, courts in this country have generally accepted the use of euphemisms such as "alinifanyia tabia mbaya".

44. Kennedy Kiptoo Korir (PW6) who was the clinical officer testified that he examined the victim on the material day. He testified that he found that the victim's genitalia was bleeding and had lacerations. He further testified that he found the victim's genitalia to contain spermatozoa and epithelial cells. PW6 concluded that the victim (PW2) had been defiled. He produced a PRC Form, P3 Form, and treatment notes as P.Exh 2, P.Exh 3 and P.Exh 5 respectively. I have looked at the exhibits and the findings corroborate PW6's testimony.

45. The medical evidence corroborated the victim's testimony. I am inclined to accept the medical evidence and PW6's professional opinion that there had been penetration.

46. One of the grounds that the Respondent relied upon in conceding the Appeal was that a DNA test should have been conducted on the spermatozoa found in the victim and on the Appellant to ascertain that the Appellant defiled the victim. Section 36(1) of the *Sexual Offences Act* provides that: -

> Notwithstanding the provisions of section 26 of this Act or any other law, where a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific testing, including a DNA test, in order to gather evidence and to ascertain whether or not the accused person committed an offence.

47. The Court of Appeal in the case of Robert Mutungi Muumbi v Republic [2015] KECA 584 (KLR),held that:-

> "Section 36 (1) of the Act empowers the Court to direct a person charged with an offence under the Act to provide samples for tests, including for DNA testing to establish linkage between the accused person and the offence. Clearly, that provision is not couched in mandatory terms. Decisions of this court abound which affirm the principle that medical or DNA evidence is not the only evidence by which commission of a sexual offence may be proved."

48. Similarly in AML v Republic [2012] KEHC 2554 (KLR), held:-

> "...........The fact of rape or defilement is not proved by a D.N.A test but by way of evidence."

49. It is my finding therefore that it was not mandatory for the DNA test on the spermatozoa to be conducted to provide a link between him and the offence. What the Prosecution needed to prove was penetration which they have.

50. Based on the totality of the evidence before me, it is my finding that the Prosecution proved the age of the victim (PW2), the Appellant's positive identification and the victim's penetration. It is also my finding that Prosecution proved its case against the Appellant beyond reasonable doubt.

iii. Whether the Appellant's defence placed doubt on the Prosecution's case.

51. The Appellant (DW1) stated that he did not commit the offence on the material day, he was picking tea leaves with his wife. The Appellant raised an alibi defence. In the case ofVictor Mwendwa Mulinge v Republic [2014] KECA 710 (KLR), the Court of Appeal stated:-

> " It is trite law that the burden of proving the falsity, if at all, of an accused's defence of alibi lies on the prosecution; see Karanja vs. R [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought."

52. It is trite that once the Appellant raised an alibi defence, the onus was on the Prosecution to displace the defence of alibi after the defence raises it at the trial. The Appellant's defence of alibi was raised at the defence hearing and not at the beginning of the trial thus denying the Prosecution an opportunity to verify the alibi. I have also noted that the issue of the alibi was not put across the Prosecution witnesses during cross examination. This in my view was an afterthought by the Appellant.

53. Having gone through the Appellant's defence as a whole, it is my finding that it was a mere denial, shallow and an afterthought. His defence that he was the only one who was medically examined and the other suspects ought to have been charged alongside him was displaced by the clinical officer's (PW6) testimony that he examined the other suspects (PW4 and PW5). EK (PW5) also corroborated this testimony when he testified that he was medically examined. In summary, the Appellant's defence did not cast any doubt on the Prosecution's case which I have already found proven.

iv. Whether the sentence preferred against the Appellant was harsh.

54. The penal section for this offence is found in section 8(2) of the *Sexual Offences Act* which states that:-

> A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life

55. The Appellant submitted that the sentence above was harsh and the circumstances of the case did not warrant such a severe sentence.

56. The sentence as provided for above provided for a life sentence. The Court of Appeal in the case of Manyeso*v Republic (Criminal Appeal 12 of 2021*) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) declared a life sentence unconstitutional. However, recently, the Supreme Court has stated that the Court of Appeal had no jurisdiction to declare a section of the law unconstitutional if the constitutionality of the statute or section of law was not brought up first before the High Court. The Supreme Court further clarified that for a statute or a section of the law to be declared unconstitutional, must be litigated first in the High Court and then have the Legislature amend the Act.

57. In Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR), the Supreme Court of Kenya held:-

> " We therefore find that in this matter the Court of Appeal did offend the principle of stare decisis. Notably, we observe that the Court of Appeal determined that the ratio decidendi in the Muruatetu Case on the unconstitutionality of mandatory sentences could be applied mutatis mutandis to the mandatory nature of minimum sentences provided for in the *Sexual Offences Act*. In doing so, and with respect, the Court of Appeal failed to abide by the clear principles provided in both the Muruatetu case and the Muruatetu directions in this instance........
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> ....Mandatory sentences leave the trial court with absolutely no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentences. What is prescribed is the least severe sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence.........
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> ....Returning to the issue of the constitutionality or otherwise of minimum sentences under the *Sexual Offences Act* and discretion to mete out sentences under the said Act, we note that the Court of Appeal failed to identify with precision the provisions of the *Sexual Offences Act* it was declaring unconstitutional, left its declaration of unconstitutionality ambiguous, vague and bereft of specificity. We find this approach problematic in the realm of criminal law because such a declaration would have grave effect on other convicted and sentenced persons who were charged with the same offence. Inconsistency in sentences for the same offences would also create mistrust and unfairness in the criminal justice system. Yet the fundamental issue of the constitutionality of the minimum sentence may not have been properly filed and fully argued before the superior courts below..........
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> ....We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is Parliament and not the Judiciary that sets the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in Statute, must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence is set in Statute, the Legislature has already determined the course, unless it is declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law. However, in the special circumstances of a declaration of unconstitutionality, the process is reversed."

58. The import of the above decision was that the life sentence as provided for in section 8(2) of the *Sexual Offences Act* remained valid.

59. I have considered the circumstances of the case and by virtue of the age of the victim (3.5 years old), the circumstances were aggravating. It is my finding that the Appellant must be held accountable for his actions and must suffer proportionate punishment. A stiff sentence would also serve as a deterrence to others.

60. However, it is my view that a life sentence was indeterminate in nature and by this very nature, such a sentence was degrading and inhuman to the Accused. In Manyeso v Republic (supra), the Court of Appeal held:-

> "An indeterminate life sentence was inhumane treatment and violated the right to dignity under article 28 of the *Constitution*. An indeterminate life sentence without any prospect of release or a possibility of review was degrading and inhuman punishment. It was a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation was achieved."

61. Similarly in Kaningi v Republic [2024] KEHC 12758 (KLR), the court held:-

> "This court is of the view that an indeterminate sentence limits sentencing to the purpose of retribution. Sentencing should not be restricted to the sole objective of retribution. According to paragraph 4.1 of the 2016 Judiciary of Kenya Sentencing Policy Guidelines, other objectives of sentencing include deterrence, rehabilitation, restorative justice, community protection and denunciation. When carrying out sentencing all these objectives should be considered in totality. A life sentence should not necessarily mean the natural life of the prisoner; that would be an indeterminate sentence that limits sentencing to retribution. Properly construed, a life sentence could mean a set period of time depending on criminal responsibility, retribution, rehabilitation, community protection and recidivism."

62. Taking my cue from the above authorities, I am of the view that the Accused should serve a determinate sentence. In the circumstances thereof, I am minded to interfere with the sentence.

63. In the end, whilst I uphold both the conviction, the sentence of life imprisonment is vacated and substituted with 30 years' imprisonment.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 23RD DAY OF APRIL, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of the N/A for the Appellant, Njeru for the Respondent. Siele/Susan (Court Assistant).