



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Republic (Criminal Appeal E032 of 2022)  
[2025] KEHC 4895 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4895 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E032 OF 2022**

**DK KEMEL, J  
APRIL 25, 2025**

**BETWEEN**

**CHRISPO ODUOL OTIENO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the sentence of Hon. L. N. Sarapai (PM) in  
Ukwala SRMC Sexual Offence No. 01 of 2021 delivered on 23/11/2022)*

**JUDGMENT**

1. The Appellant herein Chrispo Oduol Otieno appeals the sentence of the learned trial magistrate Hon. L. N. Sarapai in Ukwala Senior Resident Magistrate's Court Sexual Offence No. E01 of 2021 delivered on 23/11/2022 wherein he was ordered to serve twenty (20) years imprisonment.
2. Aggrieved by the said conviction, the Appellant filed a Memorandum of Appeal on 7/12/2022 wherein he raised the following grounds of appeal.
  - i. That the trial court failed to factor the provisions of Section 333(2) of the [Criminal Procedure Code](#) since he remained in custody for one year and eight months.
  - ii. That he appeals against the sentence.
  - iii. That the Appellant is a first offender having come into conflict with the law for the first time.
  - iv. That the sentence is harsh and arbitrary.
  - v. That the long period of incarceration would ruin his life.
  - vi. That the Appellant is the bread winner for his family.



3. This being the first appellate court, its duty is to re-evaluate the evidence tendered before the trial court and subject it to an independent analysis and to arrive at its own independent conclusion as to whether or not to uphold the decision of the trial court. (See *Okeno Vs. Republic* [1972] EA 32.
4. It is noted that the Appellant's appeal is not on conviction but on the sentence imposed.
5. The appeal was canvassed by way of written submissions. It is only the Appellant who complied.
6. I have given due consideration to the record of the lower court and the submissions filed. The issue for determination is whether the sentence imposed by the trial court was excessive or harsh.
7. It is noted that the Appellant had been charged with a main count of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* as well as an alternative count of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*. The two offences provide as follows:

8(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

8(3) A person who commits an offence of defilement with a child aged between the age of twelve and fifteen is liable upon conviction to imprisonment for a term of not less than twenty (20) years.

11(1) A person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten (10) years.

The Appellant herein was found guilty on the main count under Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 and sentenced to twenty (20) years imprisonment. I find the said sentence is the possible minimum in law. In *Petition No. 18/2023, Republic vs. Stephen Gichuki Mwangi & Others* [2023] eKLR the Supreme Court held that trial courts do not have jurisdiction to interfere with minimum sentences under the *Sexual Offences Act* No. 3 of 2006 and that the said act remains in force until it is amended or declared unconstitutional. In the circumstances, I am unable to tinker with the sentence imposed by the trial court as the same is quite lawful in all respects. The complainant was born on 26/8/2009 and that as at the time of the incident on 2/1/2021, she was aged 11 years seven months and twenty-four days and was just a few months shy of twelve years. I find that the age was within the bracket of between 12 – 15 years as per the Act. It is also noted that the action of the Appellant was abhorrent as the complainant has been scarred for the better part of her life. The Appellant who is aged fifty (50) years old and with a family, was expected to protect the complainant who was his cousin but instead turned into a predator. I find that the Appellant deserved to serve a custodial sentence so that he undergoes comprehensive rehabilitation before being released back to the society.

8. The Appellant has sought for the period spent in custody to be considered. Indeed, the Appellant did not manage to pose bail and thus remained in custody throughout the trial. The period spent in custody must be taken into consideration as provided for under Section 333 (2) of the *Criminal Procedure Code*. The Appellant was arrested on 2/1/2021 and therefore the sentence imposed should commence from the date of arrest.
9. In view of the foregoing observations, the Appellant's appeal on sentence partially succeeds only to the extent that the said sentence of twenty years imprisonment shall commence from the date of arrest namely 2/1/2021.

**DATED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**D. KEMEI**



**JUDGE**

In the presence of:

Chrispo Oduol Otieno.....Appellant

Mocha.....for Respondent

Mboya.....Court Assistant.

