



REPUBLIC OF KENYA



KENYA LAW
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**Sitati v Republic (Criminal Appeal E009 of 2024)
[2025] KEHC 8239 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 8239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E009 OF 2024
MS SHARIFF, J
APRIL 8, 2025**

BETWEEN

ALEX WANGILA SITATI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant was convicted and sentenced to 20 years imprisonment for 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. The particulars being that on the 11th day of May 2022 at 1800 hours at [Particulars Withheld] village in Cheptais Sub County within Bungoma County he intentionally and unlawfully caused his penis to penetrate the vagina of B.M.M. a child aged 11 years.
3. The Appellant has listed the following grounds of appeal:
 - a. That I am a first offender and remorseful for the offence committed.
 - b. That this appeal is not against the sentence but merely requesting leniency.
 - c. That in the circumstances of this case the sentence of 20 years imprisonment is manifestly harsh and excessive.
 - d. That his family is very poor and his wife is un-employed. He was the sole bread winner to the family and the prolonged sentence subjects them to severe suffering.
 - e. That may it please this Hon. Court to consider reducing the sentence imposed on humanitarian grounds.
 - f. That he wishes to raise more grounds at the hearing of his appeal thereof.



4. The appeal was canvassed by way of written submissions. Both parties complied with the Court directive.
5. Having considered the Petition of Appeal and the submission of the parties herein, the only issue for determination is whether this Court should interfere with the sentence as meted out in the lower Court.
6. The Appellant was convicted and sentenced under the *Sexual Offences Act*. Section 8 (1) and (3) of the Act provides:-
 1. A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 3. A person who commits an offence of defilement with child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
 5. In the case Shadrack Kipkoech Kogo - Vs - R., Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus: -

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.”
5. The complainant was aged 11 years at the time of commission of the offence. The appellant ought to have been charged under sections 8 (1) and (2) of the *Sexual Offences Act*. Section 8 (2) of the SOA provides that a person who commits the offence of defilement with a child aged 11 years or less shall upon conviction be sentenced to life imprisonment. The sentence of twenty (20) years that the Trial Court had meted on him was therefore lenient and contrary to the statutory prescribed mandatory sentence. It is disheartening to note that the respondent did not file any notice of enhancement of sentence and as such I will not disturb the sentence despite the gravity of the offence and the lasting adverse effect on the minor both physical and psychological. It is absurd that the appellant had the presence of mind to crave for leniency from this court yet he had heartlessly defiled an eleven years old child.
6. On the balance the Appellant’s appeal herein lacks merit and is hereby dismissed.
7. This file is hereby marked as closed.

Orders accordingly.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 8TH DAY OF APRIL 2025.

M.S.SHARIFF

JUDGE

In the presence of:

Appellant

Ms Kibet for the Respondent

Diana Court Assistant

