



REPUBLIC OF KENYA



**Sita & another v Republic (Criminal Appeal 106 of 2023)
[2025] KEHC 4205 (KLR) (Crim) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 106 OF 2023**

KW KIARIE, J

APRIL 3, 2025

BETWEEN

JOSEPH MAGARI SITA 1ST APPELLANT

MUJA LUHANGA BIBI 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E1280 of 2022 of the Senior Principal Magistrate's Court at Engineer by Hon. E.N. Wanjala–Principal Magistrate)

JUDGMENT

1. Joseph Magari Sita and Muja Luhanga Bibi, the appellants, were convicted of trafficking in person contrary to section 3 (1) as read with section 3 (5) of the [Counter-Trafficking in Persons Act](#).
2. The particulars of the offence are that on the 31st day of August 2022 at Ol Kalou Township, within Nyandarua County, jointly transported F.N.R. and J.N.M. Children aged 8 and 6 years, respectively, from Tanzania to Nyandarua County- Kenya to exploit them.
3. The appellants were sentenced to fifteen years imprisonment. They were aggrieved and filed this appeal in person. They raised the following grounds of appeal:
 - a. The imposed sentence is excessive and does not go well with the policy of sentencing
The appellant is remorseful and regrets his actions.
 - b. Before his conviction and sentence, the appellant was a young man who worked hard to support himself and his family.



- c. The appellant worked tirelessly to support his family, self, and potential if given another chance.
 - d. The court considers my mitigation grounds. It awards a lesser sentence or substitutes the remaining sentence with a non-custodial sentence, or the court will be pleased to order that the appellant serve in Community Service.
4. The state opposed the appeal through M/s Odero Vena, learned prosecution counsel.
 5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
 6. The appeal is on sentence only. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs. Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will exercise its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James Vs. REX* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R Vs. Shershewcity* (1912) C.CA 28 T.LR 364.

7. Section 3 (5) of the *Counter-Trafficking in Persons Act* provides:

A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.
8. The learned trial magistrate meted out an illegal sentence. The ODPP did not notify the appellants that they intended to apply for an enhanced sentence. Enhancing the punishment will be prejudicial to the appellants.
9. The upshot of the foregoing is that the appeal is dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 3RD DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

