



**AO v Republic (Criminal Appeal E060 of 2023)
[2025] KEHC 8422 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E060 OF 2023**

**AC BETT, J
JUNE 16, 2025**

BETWEEN

AO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. By a Judgement delivered on 24th January 2025, the court upheld the conviction of the Appellant 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. However, since the Appellant was established to have been a minor at the time he committed the offence, I called for a pre-sentence report to guide me in determining the appropriate sentence.
2. A social inquiry was undertaken by the Kakamega County Probation Office and pre-sentence report filed on 10.3.2025.
3. An analysis of the pre-sentence report portrays the Appellant as a young man who did not comprehend the legal implications of his romantic liason with an underage girl. An only child, he dropped out of school due to financial constraints and started doing manual labour to cover his basic needs. He was of good character with no known history of drug or substance abuse. His relationship with the victim was well known to both families and resulted in the birth of a child.
4. The Appellant is said to have acknowledged his mistake and to be genuinely remorseful. He is said to be focused on making amends by assuming his parental responsibilities.
5. The victim is said to have rejoined school but later dropped out in Class 8. She has left the three (3) year old child, a product of her relationship with the Appellant, in the care of her grandfather and brother.



6. The victim's family and the community do not oppose a non-custodial sentence for the offender and feel that his presence would be more beneficial to his minor daughter.
7. If the Appellant had been arraigned immediately the offence was reported, he would have been tried as a minor and although he was older than the victim, it was by about three years. The trial court ought to have considered the Appellant's age while making its decision on sentencing and having failed to do so, condemned the Appellant alone when it was evident from the proceedings that Appellant engaged in a mutual love affair with the victim while they were at the adolescent stage.
8. In the case of *Evans Wanjala Siibi v. Republic* [2019] eKLR, the Court of Appeal held thus:-

“ 13. We think, with respect, that had the two courts below adopted a more fair-minded and-even-handed approach to the case, they would at the very least have sought to establish the appellant's age. Instead, what emerges is a rush to punish him in a zealous deployment of the *Sexual Offences Act* for the supposed protection of the complainant. Once again the unfair consequences of a skewed application of that statute predominantly against the male adolescent is quite apparent: two youths caught engaging in sex receive diametrically opposite treatment. The girl is branded a victim and guided to turn against her youthful paramour while the boy, Juliet's Romeo, is branded the villain, hauled before the courts and visited with a lengthy jail term. We very much doubt that it conduces to good sense, policy and our own conceptions of justice and fairness that the law should be deployed in a manner so disparative and discriminative in effect. A supposed justice resting on the shaky foundation of injustice against young boys hardly warrants the term.

14. Where, as here, the person accused of a criminal offence is a minor, the law is cognizant of the attendant vulnerability of his position and puts in place measures to ameliorate the same and thus avoid injustice. This is in keeping with *the Constitution*'s own peremptory requirement at Article 53(2) that in every matter concerning a child, the best interest of the child shall be of paramount importance.”

9. In my view, to condemn an adolescent boy twenty (20) years imprisonment because of a romantic relationship with a girl who is also at an adolescent stage is to rob the boy's future and may in the end, be counter-productive. The couple ought to have been treated equally and given a chance to reform. In any event, since there was a child born out of the relationship, the court ought to have also considered that the said child needed parental love and care and given a chance to the Appellant to exercise his parental responsibility.
10. In the end, I hereby set aside the twenty (20) year sentence and substitute therefore a probationary sentence of three (3) years. The Appellant is therefore released from prison to serve the three (3) years' probation.
11. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:



Appellant in person

Ms. Chala for the Respondent

Court Assistant: Polycap

