



**Odhiambo v Republic (Criminal Appeal E037 of 2024)
[2025] KEHC 10074 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E037 OF 2024**

**DK KEMEL, J
JULY 11, 2025**

BETWEEN

VINCENT ODHIAMBO ODHIAMBO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the sentence of Hon. JP Mkala (RM) in Siaya Chief Magistrates Court Sexual Offences Case No. E037 of 2023 dated 2/7/2024)

JUDGMENT

1. The Appellant herein Vincent Odhiambo Odhiambo has lodged the present appeal following the conviction and sentence of Hon. JP Mkala (RM) in Siaya Chief Magistrates Court Sexual Offences Case No. E037 of 2023 wherein he was sentenced to serve 30 years' imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006.
2. Aggrieved by the said conviction and sentence, the Appellant first filed his Petition of Appeal on 30/7/2024 wherein he raised several grounds of appeal. However, the Appellant later opted to challenge only the sentence and thus filed an amended Petition of Appeal dated 12/2/2025 wherein he raised one ground of appeal namely that the learned trial magistrate erred in law and fact in imposing a lengthy sentence without taking into consideration such factors as the age of the Appellant, circumstances in which the offence was committed and the fact that the Appellant was a first offender. The Appellant therefore prayed that he be given another chance in life by reducing the sentence imposed downwards.
3. This being the first appellate court, its duty is well spelt out, namely to evaluate the evidence presented before the trial court and subject it to an independent analysis and arrive at its own independent conclusion as to whether or not to uphold the decision of the trial court. See *Okeno v Republic* [1972] EA 32.



4. It is noted from the record that the Appellant had been charged with an offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the 5th day of October 2023 at Nango village, Central Gem Location in Gem Sub County in Siaya County in the Republic of Kenya willfully and intentionally penetrated the vagina of a female child named I.A aged 7 years old.

The Appellant also faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the 5th day October 2023 at Nango village, Central Gem Location in Gem Sub County in Siaya County in the Republic of Kenya intentionally and unlawfully caused his penis to touch the vagina of a female child named I.A aged 7 years.

5. The Respondent's case is that on the material date, the Complainant had been sent by her mother (PW1) to go and fetch water from the river but that she delayed. Apparently, the Appellant herein waylaid the minor and forcefully defiled her. A neighbor (PW3) who was walking home heard the cries of a child from inside a maize plantation near the river and that she approached the scene and saw the Appellant herein lying on top of the child defiling her and who hastily put on his trouser upon seeing her and fled from the scene. She then got hold of the minor and took her to her mother (PW1). The child was later taken to Yala Sub County Hospital where she was examined by a clinical officer (PW5) who established the presence of a whitish substance on the distal thigh region and that there were lacerations on the vagina as well as vaginal bleeding and a broken hymen. The said clinical officer confirmed that there was penetration of the complainant's genitalia and that he produced the P3 form, laboratory request, Post Rape Care form and outpatient card as exhibits. The Appellant was later apprehended by members of public who handed him over to Sinaga police post where the investigating officer (PW6) preferred charges against him.

6. The trial court vide a judgment dated 30/5/2024, found the Appellant guilty of the main charge of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No. 3 of 2006 and convicted him accordingly.

7. As the Appellant has opted to lodge an appeal against the sentence, then this court will not delve into the issue of his conviction.

8. Section 8(1) and 8(2) of the *Sexual Offences Act* No. 3 of 2006 provides as follows:

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

8(2) 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.

9. It is noted that the trial court sentenced the Appellant to serve thirty (30) years' imprisonment which has precipitated this appeal. It is noted that the Respondent's counsel did not file a notice of enhancement of sentence and has urged this court to sustain the sentence imposed by the trial court as the same is fair and commensurate with the charges.

10. The Supreme Court of Kenya in Petition No. E018 of 2023 in *R v Joshua Gichuki Mwangi & Others* held that minimum sentences under Section 8 of the *Sexual Offences Act* are lawful as long as the said statute is still in force and remains valid.



Also, the Court of Appeal in *Evans Nyamari Ayako v Republic* Criminal Appeal No. 222 of 2022 at Kisumu held as follows:

“On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold that life imprisonment translates to thirty years imprisonment.”

11. The Appellant has urged this court to consider reducing the sentence. It is trite that sentencing is the discretion of the trial court and that an appellate court will be slow to interfere with the discretion of the trial court unless it is shown that the trial court did not consider relevant factors or that the sentence is manifestly harsh and excessive or is illegal. It is noted that the trial court took into consideration the circumstances of the case, pre-sentence report and the mitigation of the Appellant before settling for the 30 years’ imprisonment. Indeed, the actions of the Appellant in defiling the young and vulnerable complainant was abhorrent and must be deprecated. The Appellant was expected to be a protector of the vulnerable members of his society but not to prey upon them. The presentence report dated 18/6/2024 revealed the Appellant as a social misfit in the community due to his abuse of drugs and that he had been known to chase and scare women and children whenever he is under the influence of bhang. It further revealed that he had become a thorn in the flesh of the community members who now breathe a sigh of relief after his conviction and that they view him as a dangerous member who should be kept away. Looking at the circumstances of the case and the fact that the Respondent has not sought to enhance the sentence, I am satisfied that the sentence of thirty years’ imprisonment is reasonable and commensurate with his moral blameworthiness. The Appellant requires to undergo comprehensive custodial rehabilitation before being released back to the society. It is noted that the Appellant did not manage to post bail and thus the period spent in custody must be taken into account in line with the provisions of Section 333 (2) of the *Criminal Procedure Code*. The sentence shall therefore commence from the date of arrest namely 6/10/2023.
12. In the result, and save only that the sentence of thirty (30) years’ imprisonment shall commence from the date of arrest namely 6/10/2023, the Appellant’s appeal lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 11TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of:

Vincent Odhimbo Odhiambo.....Appellant.

M/s Kerubo.....for Respondent.

Okumu.....Court Assistant.

