



REPUBLIC OF KENYA



**Taabu v Republic (Criminal Appeal E007 of 2024)  
[2025] KEHC 9500 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9500 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL APPEAL E007 OF 2024  
FN MUCHEMI, J  
JULY 3, 2025**

**BETWEEN**

**BRAMUEL BARASA TAABU ..... APPELLANT**

**AND**

**REBUPLIC ..... RESPONDENT**

*(Being an Appeal against the sentence in the Senior Principal Magistrate Court in Ruiru by Honourable C. K. Kisiangani (PM), in Criminal Sexual Offence Case No. E011 of 2022 on 20th September 2023)*

**JUDGMENT**

**Brief Facts**

1. The appellant lodged this appeal against sentence imposed by Principal Magistrate Ruiru in Criminal case No. E011 of 2022 whereas he was charged and convicted of the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006 and 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. He was convicted of the principal charge and sentenced to twenty (20) years imprisonment.
2. Being aggrieved by the decision of the trial court, the appellant lodged this appeal citing 6 grounds which can be summarised as follows:-
  - a. The learned trial magistrate erred both in law and in fact by sentencing the appellant to twenty years imprisonment which is harsh and excessive.
3. Parties disposed of the appeal by exchanging submissions as per the directions of the court.



### **The Appellant's Submissions**

4. The appellant relies on the cases of Michael Ndungu vs Republic [2015] eKLR and J.K. vs Republic [2016] eKLR and submits that the trial court failed to consider his mitigating factors which are that he is a first time offender with two children who depend on him and that his mother was undergoing surgery at the time of his arrest, a situation that had a significant impact on him and other family members. The appellant further submits that whilst he acknowledges the gravity of the offence, the trial court failed to weigh the possibility of rehabilitation which would warrant a more lenient sentence. The appellant refers to the case of Mwangi vs Republic [2004] 2 KLR 45 and submits that sentencing ought to be guided by the principles of fairness and proportionality. Thus, the sentence of twenty (20) years imprisonment is disproportionate considering the mitigating factors presented.

### **The Respondent's Submissions**

5. The respondent relies on the cases of Kamaro Wanyingi vs Republic (2008) eKLR and Republic vs Thomas Gilbert Cholmondeley (2009) eKLR and submits that the major aim of sentencing is to protect innocent citizens of the society. The respondent argues that the sentence was legal and in line with Section 8(3) of the [Sexual Offences Act](#). To support her contentions, the respondent refers to the cases of Abdalla vs Republic KECA 1054 (KLR) and Supreme Court Petition No. E018 of 2023 Republic vs Joshua Gichuki Mwangi.

### **Issue for determination**

6. The main issue for determination is whether the sentence meted out against the appellant is justified.

### **The Law**

7. It is noted that this is an appeal against the sentence only. It is important to determine the circumstances under which an appellate court interferes with the sentence by the trial court. The principles guiding interference with sentencing by the appellate court were properly in my view, set out in *S. vs Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that:-

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court....However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking” “startling” or “disturbingly inappropriate” similarly in *Mokela vs The State* (135/11) [2011] ZASCA 166, the Supreme Court of South Africa held that:-

“It is well established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.



8. The predecessor of the Court of Appeal in the case of *Ogolla s/o Owuor vs Republic* [1954] EACA 270 pronounced itself on this issue as follows:-

“The court does not alter a sentence unless the trial judge has acted upon wrong principles or overlooked some material factors.”

9. The Court of Appeal, on its part in *Bernard Kimani Gacheru vs Republic* [2002] eKLR restated that:-

“It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence, unless that sentence is manifestly excessive in the circumstances of the case or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

10. Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 provides that:-

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

11. The Supreme Court decision in *Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023)* [2024] KESC 34 (KLR) (12 July 2024) (Judgment) held that:-

Mandatory sentences left the trial court with absolutely no discretion such that upon conviction, the singular sentence was already prescribed by law. Minimum sentences however set the floor rather than the ceiling with regards to sentences. What was prescribed was the least severe sentence a court could issue, leaving it open to the discretion of the courts to impose a harsher sentence.

The judgment of the Court of Appeal delivered on October 7, 2022 was one for setting aside. In any case, the sentence imposed by the trial court against the respondent and affirmed by the first appellate court was lawful and remained lawful as long as Section 8 of the *Sexual Offences Act* remained valid. The court of Appeal had no jurisdiction to interfere with that sentence.

12. The magistrate took into consideration the mitigation of the appellant during sentencing as he clearly stated and gave the sentence that was in accordance with the Section 8(30) of the *Sexual Offences Act*. The court took into consideration the nature and circumstances of the offence, the appellant and the ramifications of the appellant’s actions on the thirteen (13) year old child’s future. It is my considered view that the sentence of twenty (20) years is lawful and reasonable.

13. Consequently, the sentence meted was within the law. It was neither harsh nor excessive and as such, I find no reason to interfere with the said sentence.

14. I find no merit in this appeal and it is hereby dismissed with costs.

15. It is hereby so ordered.



**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3<sup>RD</sup> DAY OF  
JULY 2025.**

**F. MUCHEMI**

**JUDGE**

