



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchiri v Republic (Criminal Appeal E008 of 2023)  
[2025] KEHC 13229 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL E008 OF 2023  
EM MURIITHI, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**ELIAS GETURO MUCHIRI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from original conviction and sentence in Gichugu P.M's Court Sexual Offence Criminal case no. 16 of 2021 delivered by Honourable Wanjiru M.N (Senior Resident Magistrate) on 24th February 2023)*

**RULING**

1. The Appellant who had been charged with the the offence of defilement of a child contrary to section 8(1) as read together with section 8(4) of the [Sexual Offences Act](#) No. 3 of 2006, with particulars of the offence are that on 5<sup>th</sup> June 2021 at [Particulars Withheld], Gichugu West Division in Kirinyaga East Sub-County within Kirinyaga County, intentionally and unlawfully caused his penis to penetrate into the vagina of C.N.M a child aged sixteen (16) years was convicted of the alternative charge of the offence of indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006, with particulars of the offence are that 5<sup>th</sup> June, 2021 at [Particulars Withheld], Gichugu West Division in Kirinyaga East Sub-County within Kirinyaga County, intentionally touched the vagina of C.N.M a child aged sixteen (16) years.
2. He was sentenced to serve imprisonment for three (3) years for the Offence of Indecent Act with a child.
3. The minimum sentence for the offence of Indecent act with child contrary to section 11 (1) of the Sexual Offence Act is imprisonment for 10 years as follows:

“ 11. Indecent act with child or adult



(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.”

4. The Supreme Cour of Kenya in two decisions - Republic v Manyeso [2025] KESC 16 (KLR) and Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) delivered on 11/4/2025 has upheld the constitutionality of minimum sentences and outlawed judicial discretion in sentencing outside the minimum sentences.
5. In the circumstances, the Court would be obliged to correct the illegal sentence of ten (10) years, if it found that the appellat herei has been properly convicted for the offence of indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*.
6. Consequently, the Court will give an opportunity for the appellat to consider his appeal and to make any further submissions or take further action as he may be advised.
7. Accordingly, the judgment of the Court in the appeal shall await any such submissions or further action and the matter shall, for that purpose, be mentioned on 21/10/2025.

Order accordingly.

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Kamuga for the Appellant.

Mr. Mamba for DPP/the Respondent.

