



**Ng'ang'a v Republic (Criminal Appeal E023 of 2023)
[2025] KEHC 13155 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E023 OF 2023
EM MURIITHI, J
SEPTEMBER 25, 2025**

BETWEEN

JOHN GITAU NG'ANG'A APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by the Judgment of Hon. G. W. Kirugumi, Principal Magistrate, delivered on 9th May, 2023 in Kerugoya SO No. E013 of 2022)

RULING

1. The Appellant was convicted for the offence of Defilement Contrary to Section 8[1] as read with Section 8[4] of the *Sexual Offences Act*, and sentence to serve imprisonment for ten [10] years. The particulars of the offence are that on 8th September, 2022 at [particulars withheld] village, within Kirinyaga County intentionally and unlawfully caused his penis to penetrate the vagina of SKS, a child aged 16 years.
2. The minimum sentence for the offence of defilement contrary to section 8[4] where the child victim is over 16 years imprisonment for 15 years as follows:

“ [4] A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.”
3. 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 after the parties herein had made their submissions, respectively on 11/10/2024 and 3/9/2024, has upheld the constitutionality of of minimum sentences and outlawed judicial discretion in sentencing outside the minimum sentences.



4. In the circumstances, the Court would be obliged to correct the illegal sentence of ten [10] years, if it found that the appellant herein has been properly convicted for the offence of defilement contrary to section 8[4] of the *Sexual Offences Act*.
5. Consequently, the Court will give an opportunity for the appellant to consider his appeal and to make any further submissions or take further action as he may be advised by his Counsel.
6. 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.
7. Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF SEPTEMBER, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Kiragu for the Appellant.

Mr. Mamba for DPP/the Respondent.

