



REPUBLIC OF KENYA



**BBN v Republic (Criminal Appeal E009 of 2023)
[2024] KEHC 1014 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E009 OF 2023
GMA DULU, J
FEBRUARY 8, 2024**

BETWEEN

BBN APPELLANT

AND

REPUBLIC RESPONDENT

(From the conviction and sentence in Sexual Offence Case No. E003 of 2022 at Voi Law Courts delivered on 11th January 2021 by Hon. C. K. Kithinji (PM))

JUDGMENT

1. The appellant was charged with defilement of a child contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the offence were that on diverse dates between 2021 and 12th January 2022 in Voi Sub County within Taita Taveta County intentionally caused his male genital organ (penis) to penetrate the female genital organ (vagina) of EBK a child aged 7 years.
2. In the alternative, he was charged with committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*, the particulars of which being that on the same diverse dates and same place intentionally touched the vagina of EBK a child aged 7 years.
3. He denied both charges. After a full trial, he was convicted on the main count of defilement and sentenced to sixty (60) years imprisonment.
4. Dissatisfied with the conviction and sentence, the appellant has come to this court on appeal and relied on the following amended grounds of appeal:-
 1. That the mandatory nature of section 8(1) as read with section 8(2) of the *Sexual Offences Act* deprived the court of its legitimate power and discretion spelt out under section 216 and 329 of the *CPC*.



2. That the sentence of sixty (60) years imprisonment imposed on him by the trial court is excessively harsh.
3. That the learned trial Magistrate when imposing the sentence did not consider the period he was in remand custody as provided under Section 333(2) of the CPC.
4. This court be pleased to reduce the sentence.
5. It will be noted that the appeal is only on sentence.
6. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions.
7. I note that the Director of Public Prosecutions has filled submissions with regard to both conviction and sentence. However, the appellant in all his grounds of appeal, and written submissions, including the case authorities relied upon such as Baragoi Rotiken = Versus = Republic (2022) eKLR has restricted his appeal to the sentence only.
8. In his submissions on sentence, the appellant has also referred to section 333(2) of the Criminal Procedure Code (Cap.75), the case of Mwangi = Versus = Republic (2022) eKLR, and article 29(d) and (f) of the Constitution on sentence.
9. The maximum sentence for the offence herein under Section 8(2) is life imprisonment. Though the appellant might be a first offender, the offence is serious and the victim was actually a very young daughter of the appellant and was in his actual care.
10. The trial Magistrate sentenced the appellant to sixty (60) years imprisonment instead of life imprisonment. I will not impose life imprisonment, as in any case, the State has not asked for enhancement of sentence.
11. To conclude, I find no merits in the appeal. I dismiss the appeal against sentence and uphold the sentence of sixty (60) years imprisonment. Right of appeal 14 days explained.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistant

Appellant

Mr. Sirima for State

