



**Ngikol v Republic (Miscellaneous Criminal Appeal E020 of 2023)
[2024] KEHC 987 (KLR) (1 February 2024) (Resentence)**

Neutral citation: [2024] KEHC 987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
MISCELLANEOUS CRIMINAL APPEAL E020 OF 2023
RN NYAKUNDI, J
FEBRUARY 1, 2024**

BETWEEN

ELAAR NGIKOL APPLICANT

AND

REPUBLIC RESPONDENT

RESENTENCE

1. The applicant was charged and convicted with the offence of defilement contrary to section 8(1) of the *Sexual Offences Act* No. 3 of 2006. The particulars of which were that on the 23rd day of October, 2013 at [particulars withheld] village in Turkana West District within Turkana County intentionally caused his penis to penetrate the vagina of AL a child of 14 years old. The applicant was thereafter tried, convicted and sentenced to twenty (20) years imprisonment.
2. The applicant being dissatisfied with the decision at the lower court, filed an appeal before this court. The applicant was unsuccessful as shown in the judgment delivered on 6th March, 2019. It was the finding of this court that the applicant was given a minimum sentence allowed under the provisions of the law and as such the appeal was dismissed.
3. In his application for re-sentencing, he says that he was not bailed out throughout the trial to conviction; He urges that he is a first offender and that he is a married man with a wife and five (5) children who are traumatized by his conviction. He asks the court to consider his mitigation and review the sentence meted upon him of twenty (20) years.

Analysis And Determination

4. I have considered the application and all the information available. In such circumstances the court will ordinarily check the legality or propriety or appropriateness of the sentence. The relevant



considerations in the proceeding inter alia, are the penalty law, mitigating or aggravating factors, and the objects of punishments.

5. I note section 8(1), (3) of the [Sexual Offences Act](#) provides as follows:

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

(3) 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.

6. It is thus clear that the age of the victim was within the relevant age bracket of between 12 and 15 years as contemplated by section 8(1) as read with section 8(3) of the [Sexual Offences Act](#) in which the minimum sentence is 20 years' imprisonment.

7. I have considered the sentence imposed on the Applicant by the trial court, which was subsequently upheld by this court. Needless to say, the court has discretion on sentencing and there are some considerations attached to that. In sentencing an offender, the sentence meted out on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence. (See *Ambani v Republic*). The Court of Appeal [Thomas Mwambu Wenyi v Republic](#) [2017] eKLR cited the decision of the Supreme Court of India in [Alister Anthony Pereira v State of Maharashtra](#) at paragraph 70-71 where the court held the following on sentencing: -

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

8. Further, in the case of *Shadrack Kipkoeb Kogo v R.*, Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus: -

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.”

9. The age of the complainant was proved to be between 12 and 13 years and as such falling within the age bracket wherein the sentence upon conviction is not less than fifteen (15) years. I have taken into account the applicant's mitigating circumstances. He is a first offender with no previous criminal record. He states that he is a married man with 5 children who are no longer going to school. I don't find any reason why I should review the sentence. There is need to protect children from such sexual predators.



10. In the end and in all fairness, the case suggests that the sentence of 15 years imprisonment imposed herein was the minimum sentence of the offence committed. Accordingly, the applicant is hereby sentenced to fifteen (15) years imprisonment with effect from 12/01/2017 under the rules of Section 333(2) of the CPC.

14 days Right of Appeal explained.

DATED AND SIGNED AT LODWAR THIS 1ST DAY OF FEBRUARY, 2024

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R. NYAKUNDI

JUDGE

