



**Gor v Republic (Criminal Appeal E043 of 2023)
[2024] KEHC 2198 (KLR) (5 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E043 OF 2023**

KW KIARIE, J

MARCH 5, 2024

BETWEEN

WOSTON OTIENO GOR APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O.A case NO.01 of 2022 of the Senior Principal Magistrate's Court at Oyugis (Kendu Bay) by Hon. Celesa A. Okore-Principal Magistrate)

JUDGMENT

1. Woston Otieno Gor, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence are that on the 8th day of January 2022 at Rachuonyo North sub-county within Homa Bay County, he intentionally and unlawfully caused his penis to penetrate the vagina of S.A.A., a child aged seventeen years.
3. The appellant was sentenced to fifteen years' imprisonment. He was aggrieved and filed this appeal against the sentence. He was in person. He appealed against the sentence and contended that 15 years imprisonment is a minimum mandatory sentence, which denied him the right to a fair hearing, whereby the discretionary powers of the trial magistrate were curtailed.
4. The state opposed the appeal through Mr. David Ndege, learned counsel who contended that he was sentenced to the minimum prescribed sentence.
5. This is a first appellate court. As expected, I analyzed and evaluated all the evidence adduced before the lower court afresh and made conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.



6. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs. Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James Vs. Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R Vs. Shershewcity* (1912) C.CA 28 T.LR 364.

7. Section 8 (4) of the *Sexual Offences Act* provides:

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.

8. The circumstances of this case do not call for this court to intervene in the sentence. Secondly, he was sentenced to the minimum sentence prescribed by the law.
9. I find that the appeal lacks merit. Consequently, it is dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 5TH DAY OF MARCH 2024

KIARIE WAWERU KIARIE

JUDGE

