



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyango v Republic (Criminal Appeal E010 of 2023)  
[2024] KEHC 3923 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3923 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E010 OF 2023  
DO OGEMBO, J  
APRIL 18, 2024**

**BETWEEN**

**CHARLES OOKO ONYANGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal against the Conviction and Sentence in Siaya CM's Court, Criminal case No. S.O 7 of 2020, Hon. Limo B. Benjamin, Judgement on 4/8/2022 and Sentence on 18/8/2022)*

**JUDGMENT**

1. The Appellant, Charles Ooko Onyango, was charged before the Lower Court with the Offence of Defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*, No. 3 of 2006. The particulars of the charge were that on diverse dates between 9/12/2019 and 18/12/2019 within Siaya County, he intentionally caused his penis to penetrate the vagina of EAN, a child aged 16 years.
2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*, No. 3 of 2006. That on diverse dated between 9/12/2019 and 18/12/2019 within Siaya County, he intentionally touched the vagina of EAN, a child aged 16 years with his penis.
3. The appellant pleaded not guilty to the charges and his case proceeded to full hearing. He was eventually convicted on the main charge and sentenced to serve 10 years imprisonment. This was on 18/8/2022. He has now appealed before this court against the said conviction and sentence. In his Petition of Appeal dated 3/3/2023 and filed on 13/3/2023, the Appellant has raised the following grounds of appeal.
  1. That he is remorseful and begging for mercy.
  2. That the court should consider his cry for mercy.



3. That the sentence of 10 years imposed on him is heavy and he prays for a lesser sentence.
4. That the sentence imposed be reduced to a lesser one to enable him have time to be with his school going children.
5. That he is the breadwinner of his family and a first born.
4. From the grounds of appeal that the Appellant has raised, he only appeals against sentence. He has raised his mitigation factors and pleaded that the said sentence imposed is excessive. He thus prays for a lenient sentence.
5. Further, the Appellant has filed submissions in which he has stressed his mitigation factors and attached his testimonials.
6. In response, the prosecution has submitted that based on the case of *Daniel Wambugu Maina -vs- R* (2018) eKLR the prosecution duly proved the ingredients of the offence, being age of the complainant penetration and identification of the appellant as the perpetrator.
7. On the issue of sentence, it was submitted that the court ought to consider the age of the complainant at 16 years, the physical injuries suffered and the traumatic experience, and the need to rid the society of such wickedness and sexual perversion. Also that the Appellant took advantage of a child related to him and that the seriousness of the offence should be taken into account. Lastly that the aggravating circumstances outweigh the mitigating factors raised. It was argued that the appeal be dismissed.
8. The appeal of the Appellant herein is on sentence only. This is because the Applicant has not raised any ground in his Petition of Appeal that challenges his conviction. Neither has he challenged his conviction in the submissions.
9. I seeking an Appeal on sentence, the Appellant has raised several factors of mitigation including the fact that he is a first offender that he is sole bread winner of his family of children and elderly mother, that he is reformed as has undertaken certain vocational trainings. He has attached the relevant certificates and testimonials.
10. Lastly, that he is remorseful and seeks the leniency of the court and a revision of his sentence.
11. The prosecution, as seen above, has opposed the appeal basically on grounds that the offence the Appellant was convicted of is serious, and also the impact that the conduct of the Appellant has left on the victim.
12. I have perused the records of the proceedings of the lower court. The same show that the Appellant was duly accorded the opportunity to offer his mitigation and he states;  

“I pray for leniency of the court.”

The court on sentencing the accused noted;  

“In light of the accused conviction and upon evaluating his mitigation and the fact that the accused is a first offender. The accused shall serve 10 years in jail.....”
13. It is therefore clear that the trial court considered the mitigation of the accused.



14. Section 8 (4) of the *Sexual Offences Act* under which the accused was sentenced states;  

“A person who commits an offence of defilement with a child between age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than 15 years.”
15. The Appellant herein was sentenced to serve 10 years as opposed to the minimum sentence of 15 years provided for in law.
16. There is no doubt as to the fact that the appellant was convicted and sentenced on a serious offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act*. Obviously the trauma that the complainant minor has experienced and continues to experience is obvious. This court is therefore convinced that the aggravating circumstances of this case outweigh the mitigating factors that the appellant has raised. The sentence of the appellant, being lawful, proper and at the same time lenient, this court is not convinced that this appeal of the Appellant against sentence has any merit.
17. I therefore do not find any merit in this appeal of the Appellant and I dismiss it. Since the Appellant was on bond with a surety during his trial, I order that he shall serve out his sentence as ordered by the trial court. The sentence of the Appellant shall run from 18/8/2022 the date of his sentence by the trial court. It is so ordered. Right of Appeal explained.

**DATED, SIGNED AND DELIVERED ON THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**D. O. OGEMBO**

**JUDGE**

Read in Court in presence of the Appellant (Kisumu) and Mr. Baraza for the State.

