



**Wasike v Republic (Criminal Appeal E001 of 2022)
[2024] KEHC 3702 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E001 OF 2022
AC MRIMA, J
APRIL 5, 2024**

BETWEEN

KENNEDY SIMIYU WASIKE APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal arising out of the conviction and sentence of Hon. D. K. Mtai
(Senior Resident Magistrate) in Kitale Chief Magistrate's Court Sexual
Offence Case No. E004 of 2021 delivered on 22nd December, 2021)*

JUDGMENT

1. Kennedy Simiyu Wasike, the Appellant herein, was charged, tried and convicted of Defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. The particulars of the offence were that on June 23, 2020 at Trans Nzoia County, the Appellant intentionally and unlawfully caused his penis to penetrate into the vagina of M.N.W., a child aged 15 years old.
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*. The particulars of the offence were that on June 23, 2020 at Trans Nzoia County, the Appellant caused contact between his penis and the vagina of M.N.W., a child aged 15 years old.
3. On conviction on the main charge of defilement, the Appellant was sentenced to serve 15-years' imprisonment.
4. His appeal was mainly against the sentence. He pleaded that the sentence be reviewed given his age and the fact that he had reformed in prison.
5. The appeal herein is basically on sentence.
6. The appeal was opposed.



7. The Court in *Wanjema v. Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
8. I have considered this matter with caution and care. The trial Court was careful in the manner it conducted the sentencing proceedings.
9. The Court considered the nature of the offence and the mitigation, among other relevant actors.
10. Sentencing is a crucial part in the criminal process and the administration of justice. It is also discretionary. In exercising the discretion, a sentencing Court is called upon to be guided by a raft of considerations. Such are discussed at length in the Sentencing Guidelines published on April 29, 2016 *vide* Gazette Notice No. 2970 by the Hon. The Chief Justice of the Republic of Kenya who is also the Chairperson of the National Council on the Administration of Justice (NCAJ) and in case law including the Supreme Court in Petition No. 15 of 2015 *Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
11. This Court does not see how the sentencing proceedings are to be impugned. This Court, however, posits that it would have been more assuring for the Court to have called for a Pre-Sentence Report given the gravity of the offence and the possible sentence. Although that did not happen, given the nature of the offence and the manner in which it was committed and the fact that no recoveries were made, the sentence rendered cannot be faulted.
12. Therefore, the appeal on sentence hereby fails.
13. In the end, the following final orders of this Court do hereby issue: -
 - a. The entire Appeal is dismissed.
 - b. This file is hereby marked as closed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 5TH DAY OF APRIL, 2024.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Kennedy Simiyu Wasike, the Appellant in person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

