



**Kuria v Republic (Appeal E030 of 2023) [2024] KEHC 5036 (KLR) (13 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5036 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA**

**APPEAL E030 OF 2023**

**GL NZIOKA, J**

**MAY 13, 2024**

**BETWEEN**

**DANFRED MUIGAI KURIA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the decision of Honourable A. Lorot Chief Magistrate (CM) delivered on 20th June 2023 vide Chief Magistrate’s Court criminal sexual offence case No. 72 of 2019)*

**JUDGMENT**

1. The appellant was arraigned before the Chief Magistrate’s Court charged vide CMCC S/O No. 72 of 2019 with the offence of incest contrary to section 20(1) of the *Sexual Offences Act* No. 3 of 2006 (herein “the Act”). In the main count and an alternative count of committing an indecent act with a child contrary to section 11(1) of the Act. The particulars of each charge are as per the charge sheet.
2. The appellant pleaded not guilty to both charges and the case proceeded to full hearing. The prosecution called a total of four (4) witnesses. The appellant adduced evidence without calling any witness. At the close of the case, the court found the appellant guilty of the offence on the main count, convicted him and sentenced him to serve life imprisonment.
3. However, the appellant has appealed against the decision of the trial court on the grounds:
  - a. That, the appellant pleaded nit guilty in the instant case.
  - b. That, the learned trial Magistrate erred in law and fact when he convicted the appellant in a prosecution case on mandatory sentencing.
  - c. That, the learned trial Magistrate erred in law and fact when he convicted the appellant in the prosecution case and awarded a mandatory sentence which was harsh without leniency.



- d. That, the learned trial Magistrate erred in law and fact by applying wrong standards of proof in a criminal case which was a standard of probability instead of reasonable doubt.
  - e. That, the learned trial Magistrate erred in law and fact by convicting the appellant but did not consider the appellant's defence of alibi.
  - f. That, the learned trial Magistrate sentenced the appellant on mandatory terms without the consideration of his mitigation.
  - g. That, I pray to be present during the hearing of this appeal.
4. The respondent on its part opposed the appeal on the ground:
    - a. That the mandatory sentence imposed on the appellant was provided by law in line with the circumstances of the offence.
    - b. That all the ingredients of the offence which includes age, identification and penetration were sufficiently proved beyond reasonable doubt. The prosecution witnesses' testimony corroborated.
    - c. That the appeal is misconceived and devoid of merit and ought to be dismissed forthwith and the conviction and sentence upheld.
  5. The appeal was disposed of vide filing of submissions which have been considered. However, before I delve into the merits of the appeal, I wish to observe that, the matter herein was heard, before the Honorable J. Karanja, SPM, who heard the prosecution case and ruled on the case to answer after the prosecution closed their case. The learned trial Magistrate placed the appellant on his defence and even fixed the matter for defence hearing. The court record indicates that, the matter was last heard by Honourable J. Karanja on 6<sup>th</sup> April 2023.
  6. The subsequent record indicates that the matter was taken over by Honourable A. Lorot, CM, with effect on 30<sup>th</sup> May 2023. The record thereof indicates that, the prosecutor informed the court that, the matter had reached defence stage. The court records indicated that the court made reference to a report dated 29<sup>th</sup> March 2023 from Gilgil Sub-County Hospital. However, there is no indication as to what the report was all about and the contents thereof, save from the previous record that the appellant was ordered to undergo a mental assessment.
  7. The result of that examination has not been indicated, however, that is not an issue for consideration in this appeal. But what is evidence is that, there is no record to show that the court complied with the provisions of section 200 (3) of the Criminal Procedure Code (Cap 75) Laws of Kenya, when the matter was taken over by Honourable A. Lorot CM. I have perused both the original record in the trial court's file and the typed proceedings in the record of appeal and I note that, the provisions have not been indicated.
  8. The provisions of that section states that: -
    - (3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.
  9. The parties in this matter did not raise this issue in their respective arguments in court, but this court is duty bound to ensure the due process of law is followed, and further ensure justice is done. The requirements of section 200 of Criminal Procedure Code is a matter of law. The provisions are coached



in mandatory terms, as such the court has no option than comply with the same. The failure to observe the same amounts to travesty of justice which this court cannot shut its eyes upon.

10. In that case, this court finds that, the order that will serve the interest of justice is to order that the matter reverts back to the Chief Magistrate's court for compliance with the provisions of the said law. The matter will proceed from where it had reached before the Chief Magistrate took over. Pursuant thereto the court shall not delve into the merits of the case as that may prejudice the matter before the trial court
11. It is so ordered.

**DATED, DELIVERED AND SIGNED THIS 13<sup>TH</sup> DAY OF MAY, 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

The appellant present virtually

Mr. Abwajo for the respondent

Ms. Ogutu: Court Assistant

