



REPUBLIC OF KENYA



**Mandera v Republic (Criminal Appeal E015 of 2020)
[2024] KEHC 5042 (KLR) (13 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E015 OF 2020
RE ABURILI, J
MAY 13, 2024**

BETWEEN

SABINA OGALO MANDERA APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal against the conviction and sentence by the Hon. R. M. Nyigei delivered on the 24th March 2015 in the Principal Magistrate's Court in Tamu in Criminal Case No. 19 of 2014)

JUDGMENT

1. On 24th March 2025, the Appellant herein Sabina Ogalo Mandera was convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offence Act.
2. He was sentenced to serve twenty (20) years imprisonment as per Section 8(3) of the *Sexual Offences Act*. The minor was aged 14 years old.
3. Aggrieved by the said conviction and sentence, he filed this appeal on 1st September 2020.
4. It is not clear from the court record of this very old case, whether he sought and obtained leave for extension of time to appeal as no such order for leave was annexed to the Petition of appeal.
5. The lower court file which is quite old and appearing to have been poorly stored leading to water invasion, was only availed to this court on 14th November 2023 and the appeal was admitted on 1st December 2023.
6. When the appeal came up for directions, the Appellant who appeared in person from Kitale Main Prison and virtually submitted that he did not wish to challenge the conviction. He withdrew his appeal against conviction and urged the court to consider sentence alone.
7. The court allowed the withdrawal of the appeal against conviction.



8. He then submitted in mitigation that he was aged 47 years old. He was held in custody during the hearing of his case, which was a period of 3¹/₂ years. That his wife had left his home and that 3 children were suffering. That he had learnt tailoring in prison. He was a builder, involved in road construction. His youngest child is aged 16 years. That he had reformed and cannot involve himself with children.
9. The prosecution counsel submitted in support of the sentence imposed urging the court to consider the victim's interest as well.
10. I have considered the appeal against sentence and the submissions in mitigation and opposition to sentence reduction.
11. The victim was a 14 year old class 7 pupil. The Appellant forced the minor to his house saying he wanted to marry her by luring her with tea and threatens to kill her with a knife even when she escaped into the sugarcane plantation wherein he defiled her.
12. The sentence imposed was lawful, a mandatory minimum under Section 8(3) of the *Sexual Offence Act*.
13. The offence was serious and hence the trial court did not err when it imposed the sentence.
14. However, the convict was arrested on 11th December 2014 and was in custody since then until his trial was concluded on 24th March 2015.
15. It is not true that he was in custody for 3¹/₂ years prior to his conviction. His case was heard expeditiously and determined within 3 months which was a record short period.
16. The appeal has taken long because the trial court record could not be found. He has now been in prison nearly ten years and has a balance of 10 years by which time he will be 57 years.
17. He pleads for leniency saying he has reformed and regrets the offence.
18. In my humble view, the Appellant having served nearly ten (10) years in prison out of the 20 years Mandatory Minimum, he has learnt his lesson and if not, the law that took him to prison still exists.
19. I exercise discretion and order that unless otherwise lawfully held, the Appellant Sabina Ogalo Mandera shall be set at liberty conditional upon him not committing any offence for the next two years and should he breach his condition, he shall, upon arrest, be committed to prison to continue serving the remainder of the ten-year prison term.
20. Signal to issue.
21. I so order.
22. This file to be closed forthwith.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF MAY, 2024

R.E. ABURILI

JUDGE

