



**Oyada v Republic (Criminal Appeal E012 of 2022)
[2024] KEHC 4864 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E012 OF 2022**

DO OGEMBO, J

MAY 9, 2024

BETWEEN

SAMUEL PAUL OYADA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against conviction and sentence in Bondo PM's Court
Sexual Offence No. E016 of 2022, Hon. J.P Nandi delivered on 4/4/2022)*

JUDGMENT

1. The Appellant, Samwel Paul Oyada, 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. That between 13th March and 29th March, 2022, in Bondo sub-county within Siaya County, he willfully and unlawfully intentionally caused his penis to penetrate the vagina of RAA, a child aged 15 years.
2. He 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 between 13th March, and 29th March, 2022 in Bondo sub-county within Siaya County, he willfully and unlawfully intentionally caused his penis to touch the vagina of RAA, a child aged 15 years.
3. The record of proceedings show that when the Appellant appeared before the trial court for plea on 31/3/2023, the charges were read out to him in Kiswahili language that he chose and confirmed he is conversant with. He pleaded guilty to the main charge and a plea of guilty was accordingly entered for him. The facts of the case were read out to the Appellant on 4/4/2023 and he admitted the facts. The court thereafter accordingly convicted the appellant with the said offence as charged. The trial court proceeded and sentenced the Appellant to serve 20 years imprisonment.



4. The Appellant, aggrieved, has appealed to this court. In the petition of appeal filed herein on 14/4/2022 and dated 11/4/2022, the Appellant has listed the following grounds of appeal:-
 1. That the trial court failed to observe that the sentence imposed was manifestly harsh and disproportionate.
 2. That the court be pleased to consider that the ingredients forming the offence was not proved beyond reasonable doubt.
 3. That the court be pleased to consider the investigations tendered was shoddy.
 4. That the court be pleased to consider any aspect or condition that shall not occasion prejudice.
 5. That the Appellant beseeches the court to indulge and reduce his sentence.
5. The Appellant has filed submissions in which he pleads that the trial court meted out a mandatory minimum sentence and that his plea was not unequivocal (*Simon Gitau v R* (2016) eKLR, and *Ngingi v R* (1987) KLR and finally that Appellant was not accorded the opportunity to mitigate contrary to the directions in *Francis Karioko Muruatetu & Ano. v R.* [2017] eKLR.
6. The prosecution opposes this appeal. Counsel relied on Section 348 of the *Criminal Procedure Code* that;

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.”
7. That the issue therefore is whether the sentence was harsh or excessive. The prosecution relied on *Shadrack Kipkoech Kogo v R.* and *Wilson Waitegoi v R* (2021) eKLR, that sentence is a discretion of the trial court which should never be interfered with, unless the trial court acted upon wrong principle or overlooked material factors or took into account irrelevant factors, or that the sentence is illegal or is so inordinately excessive or potentially lenient as to be an error of principle.
8. That the victim was 15 years and her trauma will linger. That the sentences in the *Sexual Offences Act* reflect a deliberate intention by the legislature to protect the lives of the child and seriousness of the offence.
9. I have considered this appeal and the submissions of both the Appellant and Respondent’s side. I have also considered the record of proceedings before the lower court. The record reflect the position that the Appellant pleaded guilty to the charge as read out to him. He also confirmed that the facts surrounding the incident were correct as read out by the prosecution. The case of the prosecution included the examination records, the P3 for, the treatment notes and the certificate of birth of the complainant. The Appellant has not challenged the manner in which the plea was entered against him by the court. He has similarly, by way of this appeal not challenged the manner in which the appeal was taken. I have perused the record of proceedings by the trial court both of 31/3/2022 and 4/4/2022 and I am satisfied that the plea of guilty was properly entered against the Appellant and that the same was unequivocal.
10. Section 348 of the *Criminal Procedure Code* states;

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by the subordinate court except as to the extent or legality of the sentence.”



11. Having pleaded guilty and having been accordingly convicted and sentenced, the appeal of the Appellant can only be on sentence. This court was referred to the case of *Wilson Waitegei v R* (2021) eKLR, and I am duly guided by the same, which give directions on whether or not an Appellate court can interfere with the sentence of the trial court. That sentencing is a discretion of the trial court which should never be interfered with unless the trial court acted upon wrong principles or overlooked some material factors or took into account irrelevant factors or short of that, the sentence is illegal or is so inordinately excessive or potently lenient as to be an error of principle.
12. Section 8 (3) of the *Sexual Offences Act*, provides;

Any person who commits an offence of defilement with a child between the age of 12 and 15 years is liable upon conviction to imprisonment for a term of not less than 20 years.”
13. The complainant both on the charge sheet and the certificate of birth was 15 years old at the time of this incident. As seen above, the maximum sentence for the offence is 20 years imprisonment. In effect the trial court meted out the minimum mandatory sentence on the Appellant.
14. I have considered the circumstances of this case and the mitigation raised by the Appellant. Had the trial court keenly considered the said mitigation, probably might have handed out a lighter sentence as opposed to the mandatory minimum sentence provided in law. The sentence meted out was therefore a bit harsh and excessive.
15. For this reason, I find merit in the appeal of the Appellant on sentence. I allow the same and set aside the sentence of the trial court. I order that the Appellant shall serve 15 years imprisonment. This sentence shall run from 31/3/2023, the date the Appellant was first arraigned in court.

Right of appeal explained to Appellant.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF MAY, 2024.

D. O. OGEMBO

JUDGE

9/5/2024

Court

Judgment read out in court in presence of the Appellant and Ms. Kerubo for State.

D. O. OGEMBO

JUDGE

9/5/2024

