Egesa v Republic (Criminal Appeal E151 of 2023)
[2024] KEHC 6809 (KLR) (Crim) (11 June 2024) (Judgment)

Neutral citation: [2024] KEHC 6809 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL

CRIMINAL APPEAL E151 OF 2023

K KIMONDO, J

JUNE 11, 2024

BETWEEN

CEDRIC WAWIRE EGESA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from the decision by H. Onkwani, Senior Principal Magistrate in Makadara S.O. Case No. E099 of 2023 dated 22nd March 2023)

JUDGMENT

1. The appellant pleaded guilty to defilement contrary to section 8 (1) as read with 8 (3) of the *Sexual Offences Act* (hereafter the Act). He was imprisoned for twenty years.

2. The particulars were that on diverse dates between 16th and 19th March 2023 at [particulars withheld], within Nairobi county, he intentionally caused his penis to penetrate the vagina of A.N. [particulars withheld], a girl aged 15 years.

3. The original petition of appeal was lodged with leave of court on 30th May 2023 raising six grounds. They were misleading because they suggested that there was a trial in which the identification of the appellant was in doubt or that the learned trial magistrate misapprehended the evidence.

4. So on 19th October 2023, I granted him leave to amend the grounds under section 350 of the *Criminal Procedure Code*. The appellant now challenges his plea of guilt alleging that he was misled by the prosecutor "who was acting in cahoots with the complainant's parents". Paraphrased, he submitted that his plea of guilt was equivocal.At the hearing of the appeal, he relied entirely on the written submissions filed on 9th October 2023.

5. The appeal is contested by the State vide written submissions dated 26th October 2023. Learned State Counsel, Mr. Mongare, argued that the plea was unequivocal and that the sentence handed down was well within the law. He implored the court to dismiss the entire appeal.

6. This is a first appeal to the High Court. I have examined the record; re-evaluated the facts and drawn independent conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] E. A. 32, *Felix Kanda v Republic*, Eldoret, High Court Criminal Appeal 177 of 2011 [2013] eKLR.

7. The charge was read and explained in Kiswahili to which the appellant replied: Ni kweli [It is true]. When the facts were read, he accepted them as correct. The appellant is a teacher with a college education. The complainant was his student in Form 3. He admitted that he had sex with her on at least two occasions in the computer lab.

8. I thus readily find that he understood the charge and freely admitted it. There is no evidence that the parents of the complainant or the prosecutor set him up. I am fortified because in his mitigation, he said he had discussions with the parents and regretted his conduct but added: "The child was making advances at me, sexual advances. She was always in the computer lab to study".

9. As I stated, the appellant was a teacher while the victim was his student. She was a child as defined in the Act. The birth certificate (exhibit 1) shows she was born on 28th July 2007. The medical records (exhibits 2 & 3) left no doubt of penetration. The appellant conceded he was the one who penetrated the child. So much so that all the ingredients of the offence were proved and there was no plausible defence. Although he claimed the complainant was his "girlfriend" she was merely 15 years and thus incapable of giving legal consent.

10. The challenge to the validity of his plea is clearly an afterthought and a red herring. In the end I find that the plea was unequivocal. See generally *Adan v Republic* [1973] EA 445. The appeal against conviction is accordingly dismissed.

11. I will now turn to the sentence. Section 354 (3) of *Criminal Procedure Code* empowers this court to review the sentence. Under section 8 (3) of the *Sexual Offences Act*, the minimum sentence was 15 years. However, the Court of Appeal has given guidance on minimum sentences under the Act in *Jared Koita Injiri v Republic* [2019] Kisumu Criminal Appeal 93 of 2014 [2019] eKLR. The court held:

> In this case the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by section 8 (1) of the *Sexual Offences Act*, and if the reasoning in the Supreme Court [in Muruatetu's case] was applied to this provision, it too should be considered unconstitutional on the same basis.

26. I have considered the appellant's mitigation. He is a first offender, aged about 30 years and has a wife and a young child. In the interests of justice and guided by the authorities, I will set aside the sentence of twenty years. I substitute it with a sentence of 7 (seven) years in jail. In accordance with section 333 (2) of the *Criminal Procedure Code*, the sentence shall run from 20th March 2023, the date when he was arrested and placed in custody.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH JUNE 2024.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of-

The appellant.

Mr. Mutuma for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.