



**Okoth v State (Criminal Appeal E037 of 2023)
[2024] KEHC 7509 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E037 OF 2023
DO OGEMBO, J
JUNE 20, 2024**

BETWEEN

EMMANUEL SAMSON OKOTH APPELLANT

AND

STATE RESPONDENT

(Being an appeal against the decision, findings, and orders of the Hon. J.P. Nandi (PM) and Hon. R. E. Aburili in HCCRA No. E025/2022, AT Siaya, Judgment delivered on 22/2/2023)

JUDGMENT

1. The appellant, Emmanuel Samson Okoth has filed this appeal on 7/9/2023. The petition of appeal dated 28/8/2023 raises the following grounds:-
 1. That the courts erred in law and in fact in not making a finding that the ingredients of defilement were not proved beyond any reasonable doubt.
 2. That the court erred in law and in fact in not weighing the conflicting evidence in the instant case of that were inconsequential to conviction.
 3. That the courts erred in law and fact in not making a finding that the minimum mandatory nature of the sentence under Section 8 (2) of the Sexual Offences Act, No. 3 of 2006 is unconstitutional and not warranted on plea/mitigation.
 4. That the courts erred in law and in fact in not appreciating that in definitive life imprisonment that is equated to the appellant's natural life is unconstitutional and untenable.
 5. That the trial court erred in law and in fact in not following the right procedure in appointing the intermediary.
 6. That the courts erred in law and in fact in disregarding the appellant's cogent defence.



2. The appellant pleads that his conviction be quashed, sentence set aside and that he be set at liberty. Both sides filed submissions.
3. I have considered the appeal of the appellant. Without hesitation and without going into the merit or otherwise of this appeal or the submissions made on the same, I find it necessary to make the following observations:
 1. The appellant was first tried and convicted of the offence of Defilement contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act*. This was in Bondo PM's Court, Sexual Offence Case No. E064/2021. He was sentenced to serve life imprisonment on 3/8/2022.
 2. The appellant filed an appeal at Siaya High Court, being Criminal Appeal No. E025 of 2022. In a Judgment of the court (Hon. Justice R. E. Aburili), delivered on 22/2/2023, the appeal of the appellant was wholly dismissed.
 3. In this appeal, the appellant is appealing against both the decisions of the trial court and the High Court sitting on appeal.
 4. The appellant cannot appeal against both the decisions of the trial court and the High Court in one appeal as filed herein.
 5. In any case, the High Court having decided on the appeal of the appellant, the High Court is *functus officio* in this matter and the appellant is barred from filing another appeal before the same court.
4. In the circumstances, this appeal of the applicant dated 28/8/2023 is to say the least, utterly incompetent and an abuse of the process of this court. I dismiss the same wholly. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JUNE, 2024.

D. O. OGEMBO

JUDGE

Read out in court in presence of the accused (Kisumu) and Ms. Kerubo for State.

