



REPUBLIC OF KENYA



**Suge v Republic (Criminal Appeal E036 of 2022)
[2024] KEHC 6641 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E036 OF 2022
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

EZEKIEL SUGE APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgment of Hon. D.
Milimu in Eldoret law court cr. SO. NO. E010 of 2017)*

JUDGMENT

1. The Appellant was charged 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. The particulars of the charge were that on 5th May, 2011 at Eldoret-West Sub-County within Uasin Gishu County the appellant intentionally and unlawfully caused his genital organs to penetrate the vagina of M.C, a girl aged 16 years old.
2. After a full trial, the appellant was found guilty of the offence and sentenced to 8 years imprisonment. The appellant is now before this court seeking review of sentence. That he is remorseful and he regrets the incident.
3. Both parties filed submissions on the said appeal, which submissions I have perused through.
4. The appellant submitted in favor of reduction of his sentence. He stated that he is a remorseful person and he regrets committing the offence and promised never to repeat the same. He submitted that he has served two thirds of his sentence in prison and trained in different courses while in prison. He prayed for leniency on his sentence or in the alternative be set at liberty.
5. According to the Respondent, an appellate court can only interfere with the sentence decreed by the trial court in circumstances dictated by the Court of Appeal in the case of [Benard Kimani Gacheru v Republic](#) (2002) eKLR. The respondent submitted that the ideal sentence for such a case is not less than



fifteen years and as such the trial court in sentencing the appellant was lenient. That there has been no valid reason advanced to vary the sentence. The Respondent urged the court to uphold the sentence.

Analysis and Determination

6. Having considered the application and the rival submissions, the main issue I find for determination is whether the sentence imposed by the trial court was proper.
7. What is the appropriate sentence? Section 8 (4) of the [Sexual Offences Act](#) to Convict provides as follows:

“A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.”

8. The legal position on sentencing was stated succinctly by the Court of Appeal for East Africa in the case of *Ogola S/O Owoura v Reginum* (1954) 21 270 as follows:-

“The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James v R*, (1950) 18 EACA 147:

“It is evident that the Judge has acted upon some wrong principle or overlooked some material factor.”

9. I have considered the sentence imposed on the Appellant by the trial court. Needless to say, the court has discretion on sentencing and there are some considerations attached to that. In sentencing an offender, the sentence meted out on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence. (See *Ambani v Republic*). The Court of Appeal *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra* at paragraph 70-71 where the court held the following on sentencing: -

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.



10. The sentence prescribed for such an offence is a term not less than fifteen years. In order to decide whether such a sentence is appropriate, the Court has to consider the seriousness of the offence. The offence in question is that of defilement of a child aged 16 years and, in such cases, age is considered to be an aggravating factor. Given that the appellant was sentenced to serve 8 years imprisonment, I form the opinion that the sentence was appropriate. The trial considered the guidelines set out in the Muruatetu case in coming up with the sentence and I find no fault in it.
11. In the end, the complainant herein was 16 years old. The trial court imposed a sentence of 8 years and I not only find it lawful but lenient. Therefore, I find no merit in the appeal on sentence and it is hereby dismissed. The appellant shall serve the sentence to completion.
12. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 7TH DAY OF JUNE, 2024

In the Presence of

Appellant

Mr. Mugun for the State

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R. NYAKUNDI

JUDGE

