



**Emase v Republic (Criminal Appeal E012 of 2023)  
[2024] KEHC 8066 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL APPEAL E012 OF 2023**

**AC MRIMA, J**

**JULY 5, 2024**

**BETWEEN**

**PETER EMASE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal on sentence arising from the conviction and sentence by Hon.  
B. O. Ondego, Senior Principal Magistrate in Kapenguria Senior Principal  
Magistrate's Court Criminal Case No. 428 of 2014 delivered on 13th October, 2023)*

**JUDGMENT**

1. The Appellant herein, Peter Emase, was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. The particulars of the offence are that in the night of 17<sup>th</sup> and 18<sup>th</sup> March, 2014 at [particulars withheld], the Appellant did cause his penis to penetrate the vagina of E.C., a girl aged 4 years old.
2. He denied the charge and was tried in Kapenguria Senior Principal Magistrate's Court Criminal Case No. 428 of 2014. Subsequently, the Appellant was found culpable, convicted and sentenced to life imprisonment. His appeal to the High Court was dismissed.
3. The Appellant later successfully challenged the life imprisonment on account of being an indefinite sentence vide a Constitutional Petition. An order for re-sentencing was made.
4. Relying on the parties' submissions, the trial Court re-sentenced the Appellant to 40 years imprisonment. The sentence was to take into account the period already served.
5. Being dissatisfied with the sentence, the Appellant lodged the instant appeal.



6. In his submissions, the Appellant claimed that the sentence was very harsh and since that he had served 10 years in prison, he prayed for leniency and that he be released on a non-custodial sentence.
7. The State left the matter to the Court.
8. This Court is the first appellate Court.
9. The Court in *Wanjema v. Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
10. I have considered this matter with caution and care.
11. The Court considered the nature of the offence, the mitigations, the Pre-Sentence Report among other relevant actors.
12. Sentencing is a crucial part in the criminal process and the administration of justice. It is also discretionary. In exercising the discretion, a sentencing Court is called upon to be guided by a raft of considerations. Such are discussed at length in the [Sentencing Guidelines](#) published on April 29, 2016 vide Gazette Notice No. 2970 by the Hon. The Chief Justice of the Republic of Kenya who is also the Chairperson of the National Council on the Administration of Justice (NCAJ) and in case law including the Supreme Court in Petition No. 15 of 2015 [Francis Karioko Muruatetu & another v Republic](#) [2017] eKLR.
13. In considering an appropriate sentence and whether the sentence in place ought to be interfered with, this Court is guided by the Court of Appeal in [Manyeso v Republic](#) [2023] KECA 827 (KLR) where the Court stated as follows: -
  27. .... We are also alive to the fact that he [the Appellant] was convicted for defiling a child of 4 years and of the likely ramifications of his actions on the child's future. We are therefore of the view that while the Appellant should be given the opportunity for rehabilitation, he also merits a deterrent sentence. We, therefore in the circumstances, uphold the Appellant's conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefore a sentence of 40 years in prison to run from the date of his conviction.
14. This Court does not see how the sentencing Court erred. The sentence was commensurate to the nature and gravity of the offence more so since the victim was a minor aged 4 years old.
15. In the end, the following final orders of this Court do hereby issue: -
  - a. The appeal on sentence is hereby dismissed.
  - b. This file is marked as closed.Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 5<sup>TH</sup> DAY OF JULY, 2024.**



**A. C. MRIMA**

**JUDGE**

Judgment delivered in open Court and in the presence of: -

Peter Emase, the Appellant in person.

Mr. Mokaya, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Juma/Hellen – Court Assistants.

