



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukope v Republic (Criminal Appeal E015 of 2023)  
[2024] KEHC 9335 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9335 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E015 OF 2023**

**AC MRIMA, J**

**JULY 25, 2024**

**BETWEEN**

**PAUL WAMALWA MUKOPE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal on sentence arising from the conviction and re-sentencing  
by Hon. S. N. Makila, Principal Magistrate in Kitale Chief Magistrate's  
Court Criminal Case No. 68 of 2020 delivered on 9th February, 2023)*

**JUDGMENT**

1. The Appellant herein, Paul Wamalwa Mukope, was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. The victim was aged 3 years old.
2. He was also charged in the alternative with the offence of committing an indecent act with a child.
3. He denied the offences and a trial was held where he was found guilty of defilement, convicted and sentenced to life imprisonment.
4. The Appellant initially appealed against both the conviction and sentence in Criminal Appeal No. E100 of 2021. He, however, withdrew the appeal on the conviction and his appeal on sentence was allowed. He was ordered to be re-sentenced by the trial Court.
5. The re-sentencing yielded a 50-year imprisonment sentence. The Appellant then filed the instant appeal against the sentence.
6. In his submissions, the Appellant claimed that the sentence was very harsh. He prayed for a lesser sentence.
7. This Court is the first appellate Court.



8. 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.
9. I have considered this matter with caution and care.
10. 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 29<sup>th</sup> April, 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.
11. This judgment comes up after the recent decision by the Supreme Court of Kenya in *Petition No. E018 of 2023 Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR). The decision was delivered on 12<sup>th</sup> July 2024. The decision affirmed the validity of Section 8 of the *Sexual Offences Act* without exception.
12. This Court will not, however, review the sentence herein in line with the decision in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* case (supra) to life imprisonment since the issue was not raised at the hearing of the appeal.
13. Since this Court can only review the sentence in accordance with Section 8(2) of the *Sexual Offences Act*, and in view of the foregoing, the appeal hereby fails.

**Disposition:**

14. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have still been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 thereby mostly being away from the station. Apologies galore.
15. Drawing from the above considerations, the following final orders of this Court issue: -
  - (a) The appeal is dismissed.
  - (b) The file is Closed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**A. C. MRIMA**

**JUDGE**

Judgment delivered virtually and in the presence of: -



Paul Wamalwa Mukope, the Appellant in person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

