



**Mwangemi v Republic (Criminal Appeal E025 of 2023)
[2024] KEHC 9013 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E025 OF 2023
GMA DULU, J
JULY 11, 2024**

BETWEEN

CHRISPINE CHOMBO MWANGEMI APPELLANT

AND

REPUBLIC RESPONDENT

(From the conviction and sentence in Sexual Offence Case No. E029 of 2021 at Wundanyi Law Courts delivered by Hon. T. N. Sinkiyian (SRM) on 8th November 2022)

JUDGMENT

1. The appellant Chrispine Chombo Mwangemi was convicted of rape contrary to Section 3(1) and 3(3) of the *Sexual Offences Act*, the particulars of which being that on 9th August 2021 at (Particulars withheld) village (Particulars withheld) Location within Taita Taveta County intentionally and unlawfully caused his penis to penetrate the vagina of HMW.
2. On conviction, he was sentenced to fourteen (14) years imprisonment.
3. Dissatisfied with the conviction and sentence, the Appellant has come to this court on appeal, and relied upon the following amended grounds of appeal, which appear to be primarily on sentence alone:-
 1. That the sentence imposed was harsh and excessive since it was applied without considering the antecedents of the appellant or the facts and circumstances of the case.
 2. That the learned trial Magistrate erred in law by failing to appreciate that the appellant was a first offender.
 3. That the appellant was the sole bread winner for his poor family.
 4. That the appellant's aged parents depended on him for their sustenance.



4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions. I note also that the appellant restricted his written submissions to the sentence imposed while the Director of Public Prosecutions submitted on both conviction and sentence.
5. The burden was on the prosecution to prove their case against the appellant as codified in Section 107 of the *Evidence Act* (Cap.80). This being a criminal case, the standard of proof was beyond any reasonable doubt.
6. However, since the appellant initially filed a petition of appeal challenging conviction and sentence, but later amended his grounds of appeal to only the sentence, and restricted his submissions to the sentence imposed, I will deal with the sentence imposed only.
7. Under Section 3(3) of the *Sexual Offences Act*, the statutory sentence provided for rape is a minimum of ten (10) years imprisonment but which may be enhanced to life imprisonment. The trial court herein sentenced him to 14 years imprisonment.
8. I note that the trial court before sentencing him, noted that the minimum sentence of ten (10) years imprisonment would not serve justice.
9. In my view however, there were no aggravating factors or circumstances disclosed herein, which would justify a sentence higher than the minimum sentence. In my view, the covering of the mouth of the complainant was merely meant to avoid shouts from the complainant to enable the appellant succeed in his mission and not an aggravating factor. The minimum sentence itself being severe, in my view, imposing the minimum sentence of 10 years imprisonment herein would suffice.
10. In addition to the above considerations, the appellant was arrested on 15th August 2021 and was in custody during trial and sentenced on 8th November 2022. In accordance with the provisions of Section 333(2) of the *Criminal Procedure Code* (Cap.75) this period of custody during trial should have been factored in the sentence imposed, which the trial court did not do.
11. I thus allow the appeal, set aside the sentence imposed and order that instead the appellant will serve ten (10) years imprisonment from 15th August 2021, when he was arrested.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JULY 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Appellant

Mr. Sirima for State

