



REPUBLIC OF KENYA



**Rotich v Republic (Criminal Appeal E011 of 2023)  
[2024] KEHC 8064 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8064 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL APPEAL E011 OF 2023**

**AC MRIMA, J**

**JULY 5, 2024**

**BETWEEN**

**HILLARY ROTICH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal arising from the sentence by Hon. B. O. Ondego, Senior  
Principal Magistrate in Kapenguria Senior Principal Magistrate's  
Court Criminal Case No. 1060 of 2012 delivered on 13th October, 2023)*

**JUDGMENT**

1. The Appellant herein, Hillary Rotich, 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 on 26<sup>th</sup> September, 2012 at [particulars withheld], the Appellant did cause his penis to penetrate the vagina of S.C., a girl aged 11 years old.
2. He denied the charge and was tried in Kapenguria Senior Principal Magistrate's Court Criminal Case No. 1060 of 2012. 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 Court re-sentenced the Appellant to 40 years imprisonment. The sentence was to run from the date of the first conviction.
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 11 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 and the mitigations, among other relevant factors.
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 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.
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. The minor in this case was aged 11 years old as opposed to the one in *Manyeso case [supra]* who was aged 4 years old. This Court, therefore, finds that the sentence herein ought to be tempered with more so in view of the fact that the Appellant was also a minor aged around 17 years old when he was charged and to the contents of the Pre-Sentence Report dated 3<sup>rd</sup> February, 2023.
15. In the end, the following final orders of this Court do hereby issue: -
  - a. The sentence of 40 years is hereby set aside and is substituted with a sentence of 20 years imprisonment.
  - b. The sentence of 20 years in prison shall run from the date of his conviction, that is 27<sup>th</sup> August, 2013.



- c. Given that the Appellant has been in prison for the last 11 years and that he was a minor when he committed the offence, he shall serve the remainder of the sentence period on probation.
- d. This file is hereby 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 virtually and in the presence of: -

Hillary Rotich, 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.

