



REPUBLIC OF KENYA



KENYA LAW
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**Lomo v Republic (Criminal Appeal E011 of 2023)
[2023] KEHC 17243 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17243 (KLR)

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

AC MRIMA, J

MAY 11, 2023

BETWEEN

JACKSON ERUPE LOMO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal on sentence by Hon. J. K. Ng'arng'ar Chief Magistrate in Kitale Chief Magistrate's Court Sexual Offence No. 38 of 2019 delivered on 30th January, 2023)

JUDGMENT

1. The Appellant herein, Jackson Erupe Lomo, was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*, No 3 of 2006. He denied the offence and a trial was held where he was found guilty as charged, convicted and sentenced to life imprisonment.
2. The Appellant filed a Constitutional Petition No E262 of 2022 at the High Court at Kitale on the unconstitutionality of the sentence. On December 20, 2022, this Court allowed the Petition and ordered that the Petitioner be re-sentenced by the trial Court.
3. On January 30, 2023, the Appellant was re-sentenced to 20 years imprisonment.
4. The Appellant lodged the instant appeal against the re-sentencing.
5. In his submissions, the Appellant claimed that the sentence was very harsh. He prayed for a lesser sentence.
6. The State left the matter to the Court.
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. The sentencing Court received the Appellant's mitigations. The victim of sexual assault was aged 6 years old at the time the Appellant committed the heinous act on her. The Appellant was then aged 26 years old.
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 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.
11. This Court does not see how the sentencing proceedings are to be impugned. The Court exercised its discretion correctly more so given the age of the victim and the injuries inflicted on her.
12. In the end, the following final orders of this Court do hereby issue: -
 - a. The Appeal against the sentence is dismissed.
 - b. The sentence to run from February 13, 2019 when the Appellant was charged.
 - c. This file is hereby marked as closed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 11TH DAY OF MAY, 2023.

A C MRIMA

JUDGE

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

Jackson Erupe Lomo, the Appellant in person.

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

Regina/Chemutai – Court Assistants.

