



REPUBLIC OF KENYA



**Otieno v Republic (Criminal Appeal E042 of 2021)
[2023] KEHC 17715 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E042 OF 2021
RE ABURILI, J
MAY 23, 2023**

BETWEEN

CHARLES ODHIAMBO OTIENO APPELLANT

AND

REPUBLIC RESPONDENT

(Arising from the original conviction and sentence in Nyando Senior Principal Magistrate's Court Criminal Case No. E027 of 2021 delivered on 4th October 2021 by Hon. S. O. Temu (SPM))

JUDGMENT

1. The Appellant herein Charles Odhiambo Otieno was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. He was convicted and sentenced to serve twenty (20) years imprisonment by Hon SO Temu, SPM, Nyando Law Courts on October 4, 2021.
2. Particulars of the charge were that on the July 1, 2021 at Kochieng East Location, Nyando Sub county, within Kisumu County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of LA, a child aged 13 years.
3. The Appellant pleaded not guilty to the charge and so, was convicted and sentenced after a full trial.
4. Aggrieved by the conviction and sentence imposed, the Appellant filed this appeal on October 15, 2021 vide Petition of Appeal. He also filed written submissions on January 12, 2023 to canvass the appeal and on the same date he filed amended grounds of appeal and further submissions.
5. On May 3, 2023 when the appeal was mentioned before me, the Appellant, upon hearing the prosecution submit opposing the appeal, in a rejoinder, informed the Court that he was only challenging the sentence not the conviction because the evidence against him was overwhelming.



6. The Appellant having abandoned his appeal against conviction, the court marked the appeal against conviction as withdrawn. I then set this date for judgment on sentence alone. Accordingly, the conviction of the appellant is upheld.
7. Therefore, on sentence, the question is whether I should interfere with the sentence imposed by the trial court being twenty (20) years imprisonment.
8. This victim was aged thirteen (13) years old. She was born on November 11, 2007, a date that she knew very well. Although the Birth Certificate gives the name NA. and not LA, no issue was raised of that name doing the cross-examination and I am satisfied that the victim was one and the same person.
9. The Appellant in mitigation pleaded for leniency. He was a first offender according to police records. A Pre-Sentence Report was filed showing that he was economical with the truth and that he never wanted to reveal his abode and family members. He was however married and his wife was said to be in court on sentencing day.
10. Sentencing is in the discretion of the trial court. However, the *Sexual Offences Act* gives Minimum Mandatory sentences owing to the heinous nature of sexual offences that deprive the victims of their inherent dignity and traumatise them for the rest of their lives.
11. In this case, the minor was said to be traumatised, she was dragged into the maize plantation and defiled by a 41-year-old man, in broad daylight. The man was old enough to be her grandfather. The minor expected to be protected by such father figure and not to be preyed upon.
12. The prosecution urged the court to uphold the lawful sentence. I agree that the sentence was lawful. However, as the Appellant has owned up committing the offence and only sought for sentence reduction, I hereby exercise discretion and revise and set aside the sentence of twenty (20) years imprisonment and substitute it with ten (10) years imprisonment, to be calculated from the date of his arrest on July 1, 2021 as he never raised the lenient bond terms granted to him by the lower court.
13. To that extent only, the appeal against sentence succeeds. The conviction is upheld.
14. Signal to issue.
15. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2023

R. E. ABURILI

JUDGE

