



**Randa v Republic (Criminal Appeal E009 of 2022)
[2023] KEHC 18063 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E009 OF 2022
RE ABURILI, J
MAY 23, 2023**

BETWEEN

DAMANUS MAINA RANDA APPELLANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Principal
Magistrate's Court Criminal Case No E005 of 2021 at Tamu)*

JUDGMENT

1. The Appellant herein is Damanus Maina Randa. He was charged and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* on February 16, 2021. He was sentenced to serve thirty (30) years imprisonment which sentence was no doubt lenient.
2. The Presentence Report shows that he was seventy-nine (79) years old. He sought leave of this court to appeal out of time vide HCCR Misc Application No E100 of 2021 and was granted leave on March 9, 2022 upon which he lodged this appeal on March 11, 2022. In the five grounds of appeal, the appellant laments as follows:
 - i. That the trial court failed to observe that the investigations tendered was shoddy.
 - ii. That the trial court failed to consider that the prosecution evidence was full of contradiction hence unsafe to base a conviction upon.
 - iii. That the trial court failed to consider that the sentence imposed was against the weight of the evidence adduced.
 - iv. That the trial court failed to appreciate that the sentence imposed was unconstitutional due to its mandatory nature.



- v. That we be served with the certified copy of the trial court records to enable us erect more grounds of appeal.
3. The Appellant prayed that his appeal be allowed entirely. The appellant was served with a record of appeal on March 24, 2023 through prisons and given leave to file his written submissions to canvass the appeal but as at April 18, 2023 when the appeal came up for directions, his submissions has not reached this court.
 4. He submitted orally stating that he wanted the court to forgive him and help him. That he had a land dispute with the complainant's mother.
 5. Opposing the appeal, the prosecution represented by Mr Okoth Senior Principal Prosecution Counsel submitted that the Appellant's plea of guilty was unequivocal and that thirty (30) years imprisonment was lenient as he would have received life imprisonment which is the mandatory sentence under Section 8(2) of the *Sexual Offences Act*, considering the seriousness of the offence.
 6. However, counsel observed that the Appellant was not warned of the dangers of pleading guilty to such a serious offence.

Analysis And Determination

7. I have considered the appeal herein, the oral submissions and the trial court record. It is clear that the Appellant was arrested on February 3, 2021 and charged with the offence of defilement of a Minor, WA aged 12 years as per her child health card produced as an exhibit, showing that she was born on June 28, 2008.
8. The child was allegedly defiled on 1st, 2nd and November 3, 2020 in Kipkelion West Subcounty within Kericho County.
9. The accused person who is the Appellant was produced before Tamu Law Courts on February 8, 2021 where the charge was read out to him and he admitted the charge in Dholuo language before Hon EN Onzere (PM).
10. The court reminded the accused of his right to legal representative and he said that he understood before reading out the charge and all its elements. The accused responded to the Main Charge: 'It is true' upon which a plea of guilty was entered before facts of the case were read out to him and he stated that the facts were correct.
11. He was then convicted on his own plea of guilty and the State counsel stated that the accused was a first offender. In mitigation, the accused stated:

' I have committed the offence before God. I pray for forgiveness. It is my first offence.'
12. A Pre-sentence report was called for and before being sentenced, on February 16, 2021, the court explained to the accused the consequences of his plea of guilt and he was asked if he wished to change his plea to that of not guilty but he stated as follows: 'I still maintain a plea of guilty. I committed the offence.'
13. In my humble view, the trial court did warn the accused of the serious consequences of pleading guilty to the charge of defilement as the same carried mandatory sentence of life imprisonment.
14. However, after receiving presentence report, the trial court exercised discretion and sentenced the accused now Appellant to serve thirty (30) years imprisonment.



15. I have considered the plea of guilty as entered and I am satisfied that the same was unequivocal. I am also satisfied that the trial court observed all the requirements on the right to a fair trial of the Appellant by informing him of his right to legal representation and warning him of the dangers of pleading guilty to the charge of defilement which carried long term sentence.
16. The Appellant even after being warned of the consequences, he maintained his plea of guilty yet he had been given the opportunity to change his plea of not guilty for a full trial to be undertaken.
17. The prosecution produced as exhibit the child clinic card to prove her age which was twelve (12) years, the P3 Form dated November 9, 2020 which shows that she was defiled as well as treatment and laboratory notes and report which all show that the child was defiled.
18. From the Petition of appeal filed on March 11, 2022, the Appellant claims that investigations were shoddy, that there were contradictions in evidence and that sentence imposed was unconstitutional.
19. However, I find that from the facts of the case which were read out in support of the charge which the Appellant admitted and which plea was unequivocal, the facts and the charge disclosed the offence under Section 8(1) of the *Sexual Offences Act*. There was evidence of penetration, age of the minor was proved to be 12 years and the Appellant was identified as the perpetrator and he admitted committing the offence saying it was his first offence.
20. The sentence imposed was way below the Statutory Minimum provided for under Section 8(2) of the *Sexual Offences Act* which is life imprisonment. However, as the Appellant was already 79 years old and is now nearly 82 years old and living with a physical disability, it is unlikely that he will survive in prison for those thirty (30) years. At his age, off course, he ought to have known that it was not appropriate to pray on children.
21. The appeal against conviction is dismissed.
22. I exercise discretion and set aside the thirty (30) years imprisonment term imposed on the Appellant who is now 82 years old and substitute that term to the period already served in prison from his arrest on February 3, 2021 in view of his advanced age and physical disability. Therefore, unless otherwise lawfully held, the appellant herein Damanus Maina Randa is hereby set at liberty. Signal to issue
23. I so order.
24. This file is closed.

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

R. E. ABURILI

JUDGE

