Nyasimi v Republic (Criminal Appeal E026 of 2021)
[2023] KEHC 20234 (KLR) (13 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20234 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAMIRA

CRIMINAL APPEAL E026 OF 2021

WA OKWANY, J

JULY 13, 2023

BETWEEN

SAMUEL OMARI NYASIMI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the Judgment of Hon. W.C. Waswa, RM Nyamira dated and delivered on 18th March 2021 in original Nyamira Chief Magistrate's Court Sexual Offence Case No. 40 of 2020)

JUDGMENT

1. The Appellant herein was charged with the offence of defilement contrary to section 8 (1) as read with section (2) of the *Sexual Offences Act*, No 3 of 2006. The particulars of the charge were that on the 5th day of June 2020, in Nyamira South sub-county within Nyamira County, intentionally caused his genital organ, his penis, to penetrate the genital organ of RK (particulars withheld), a child aged 9 years old.

2. The Appellant also faced an alternative charge of committing an indecent act contrary to section 11 (1) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the alternative charge were that on the 5th day of June 2020, in Nyamira South sub-county within Nyamira County intentionally and unlawfully touched the genital organ, vagina of RK, a child aged 9 years with his genital organ, penis.

3. The Appellant was first arraigned in court Before Hon Wambani (Chief Magistrate) on 8th June 2020 where he pleaded 'not guilty' on all both charges. The case thereafter proceeded for hearing before Hon. Waswa where the Prosecution called a total of 5 witnesses. At the close of the prosecution's case, the trial court found that the Appellant had a case to answer in line with Section 211 of the *Criminal Procedure Code*. He was consequently placed on his defense and elected to give a sworn testimony. The Appellant opted not to call any witnesses in his defence.

4. The Appellant testified on 14th January 2021 and at the close of the defence case, the trial court convicted him of the main count of defilement contrary to Section 8(1) as read with Section 8 (2). He was thereafter sentenced to serve life imprisonment.

5. Aggrieved by the decision of the trial court, the Appellant filed a Petition of Appeal challenging the said conviction and sentence. He listed 8 grounds of appeal which he later amended on 8th February 2023. He listed the following grounds in the amended Grounds of Appeal: -

    1. That the learned trial magistrate faulted in law and fact by failing to consider that the mandatory nature of life sentence was unconstitutional given the fact that the evidence relied upon by the court was extremely below the standard of proof of a crime of that nature and that the mandatory nature of life sentence was also a gross violation of the principles of the law.

    2. That the learned trial magistrate faulted in law and fact when he unlawfully failed to observe that the ingredient of the offence in the instant case was not proved beyond all reasonable doubt as required by law in sexual offences. The age assessment was not produced in court by the maker of the said document in violation of section 77 (1) (3) of the *Evidence Act* Cap 80.

    3. That the learned trial magistrate faulted in law and fact when he based the conviction on a single testimony merely alluded to by PW1 without circumspect; that such evidence was not free from the possibility of error given that the evidence was not corroborated to credibility and veracity of the said witness and its account (sic).

    4. That the learned trial magistrate faulted in law and fact when he erroneously based his conviction on hearsay evidence demonstrated in the court by the Prosecution witnesses and failed to observe that the evidence was fictitious and meant to implicate him in the crime in question, maliciously to settle their scores (sic).

    5. That the learned trial magistrate faulted in law and fact when miserably objected (sic) the Appellant's defence without cogent reasons yet the same was indeed remarkably comprehensive in casting conceivable doubts to the strength of the Prosecution case.

6. The Appeal was thereafter admitted to hearing after which directions were issued that it be canvassed by way of written submissions.

The Appellant's Submissions

7. The Appellant submitted that the trial court relied on hearsay evidence in convicting him and that the victim's evidence was not credible; that the victim's age assessment report was not produced by the maker; that mandatory sentences were declared unconstitutional as they fettered the discretion of the court in considering the circumstances of a case; that the evidence of identification was not watertight and ought to have been carefully tested and lastly; that the trial court failed to consider his defence and failed to give reasons for the same.

8. It was the Appellant's case that the Prosecution did not discharge its legal burden of proof and that the conviction and sentence ought to be quashed and set aside.

The Respondent's Submissions

9. On the claim that the trial court erred in convicting the Appellant based on the evidence of a single witness, the Respondent submitted that the victim's account was very graphic and that PW2 and PW3 witnessed the victim walking in pain. The Respondent also noted that the medical officer formed the opinion that there was penetration. Reference was made to the decision in *Mark Oiruri Moses v Republic* (2013) eKLR where the Court of Appeal held that penetration need not be complete.

10. It was submitted that the victim was able to positively identify the Appellant because the environmental factors favoured such identification and that the Appellant did not tender any alibi evidence or demonstrate that the victim's aunt had a grudge against him.

11. On sentence, the Prosecution submitted that the Court of Appeal in the cases of *Ngao v Republic*, Criminal Appeal No. 5 of 2020 (2021) eKLR and *Juma Abdallah v Republic*, Criminal Appeal No 44 of 2018 held that the case of *Francis Karioko Muruatetu and Another v Republic* (2021) eKLR did not invalidate mandatory sentences. It was therefore the Respondent's case that the sentence of life imprisonment meted out by the trial court was legal and just owing to the victim's age. The Respondent maintained that the sentence should be upheld.

12. It is trite that the duty of the first appellate court is to revisit the evidence tendered before the trial court, evaluate it and arrive at its own findings while bearing in mind the fact that it neither heard nor saw the witnesses testify. The appellate court will also not interfere with the findings, of fact, by the trial court unless they were based on no evidence at all or on a misapprehension of it, or that the trial court acted on wrong principles in reaching its findings.

    (See *Mwana Sokoni v Kenya Bus Service Limited* (1982 -1988) 1 KAR 278 and *Kiruga v Kiruga* (1988) KLR Page 716).

Analysis and Determination

13. I have considered the Record of Appeal and the parties' respective submissions. I find that the following issues arise for my determination:

    i. Whether the prosecution's case was proved to the required standards.

    ii. Whether the sentence passed on the Appellant was legal, just and appropriate.

14. Section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*, No 3 of 2006 stipulates thus: -

    8. Defilement

    (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

    (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

15. The ingredients of defilement are age, penetration and positive identification of the perpetrator. (See the case of *Charles Wamukoya Karani v Republic*, Appeal No. 72 of 2013). In order to succeed in prosecuting the offence of defilement, the Prosecution must prove each of these ingredients to the required legal threshold, which is, beyond reasonable doubt.

Age of the Victim

16. PW5 produced an Age Assessment Report which indicated that the complainant/victim was 8 years old. The Appellant however submitted that the trial court did not take cognizance of the fact that the person who conducted the age assessment was not summoned to produce the report thereby denying him the opportunity to cross-examine the maker of the report. He argued that the production of the age assessment by the Investigating Officer offended the tenets of fair trial as codified under Article 50 (2) (4) of the *Constitution*.

17. The Appellant also contended that the birth certificate was not produced for the court's consideration and neither did the parents of the victim testify as to her age.

18. The Prosecution on the other hand submitted that Section 77 (1) (3) of the *Evidence Act*, which the Appellant relied on in challenging the production of the victim's age assessment report, did not require that the original maker of such documents be the one to produce it in court. The Respondent further noted that the Appellant did not object to the production of the said document at the hearing and could not therefore raise an objection to its production on appeal. It was submitted that the ingredient of age was proved to the required standard.

19. In the case of *Kaingu Elias Kasomo v R* Malindi Cr App No 504 of 2010, the Court of Appeal stated as follows with respect to proving the age of a victim:-

> " the age of the minor is an element of a charge of defilement which ought to be proved by medical evidence. Documents such as baptism cards, school leaving certificates in my view would also be useful in this regard..."

20. In the present case I note that the Age Assessment Report (P.Exh 3) was prepared by one Janet Moraa Maranga but was produced by No. 66155 Sgt. Jeridah Nyatichi (PW5). Section 77 of the *Evidence Act* provides as follows: -

> 77. Documentary Evidence
>
> (1) In criminal proceedings any document purporting to be a report under the hand of a Government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence.
>
> (2) The court may presume that the signature to any such document is genuine and that the person signing it held the office and qualifications which he professed to hold at the time when he signed it.
>
> (3) When any report is so used the court may, if it thinks fit, summon the analyst, ballistics expert, document examiner, medical practitioner, or geologist, as the case may be, and examine him as to the subject matter thereof.

21. My understanding of the above cited provision is that the main consideration in the production of documentary is the aspect of their authenticity. In *Naomi Bonari Angasa v Republic* [2018] eKLR the court held as follows: -

> " Whether the P3 medical form was admissible depends on whether it is produced by the maker thereof or under Section 77 of the *Evidence Act*. The doctor who examined PW1 and prepared the P3 form was not called. Section 77 of the *Evidence Act* allows a person other

than the one who prepared a report such as the P3 form in issue to produce it provided the presumption of authenticity is met. Once the presumption of authenticity under Section 77(2) aforesaid is met the document is admissible but the trial court may "Suo moto" or upon request by the accused person call the maker of such a document to appear in court for cross-examination on the form and the contents of the report".

22. A perusal of the Lower Court proceedings reveals that the Appellant did not object to the production of the Age Assessment Report by the Investigating Officer. I therefore find that he is precluded from denying its authenticity of the age assessment report at this appeal stage. I am guided by the decision by the Court of Appeal in the case of *Joshua Otieno Oguga v Republic*, Kisumu CA Criminal Appeal No 183 of 2009 [2009] eKLR where it was held that: -

> " That in short means that if the appellant wanted the medical report to be produced by a doctor, he had to apply to the court to summon the doctor who prepared the report, otherwise there was nothing wrong in law in the P3 form being produced by PC. Ann Wambui as she did."

23. Besides the Age Assessment report, I also note that the court took cognizance of the apparent tender age of the complainant by conducting voire dire examination before taking down her evidence. In the voire dire examination, the complainant stated that she was a class one (1) pupil at [Particulars Withheld] Primary School. This court takes judicial notice of the fact that class one children are ordinarily aged between 6 to 8 or 9 years depending on when they started their schooling. Furthermore, the P3 form produced at the hearing indicated that the approximate of the victim was 7 years.

24. I am satisfied that the Age Assessment Report was properly adduced into evidence and was therefore admissible in establishing, beyond reasonable doubt, that the age of the complainant was 8 years.

Penetration

25. Section 2 of the *Sexual Offences Act* defines penetration as: -

> " Penetration" means the partial or complete insertion of the genital organs of a person into the genital organs of another person;

26. The Appellant contended that the trial court solely relied on the evidence of the victim in convicting him yet the said evidence was not credible. The Respondent, on its part, submitted that penetration was proved beyond reasonable doubt through the victim's testimony which, they argued, was graphic owing to the manner in which she described the circumstances under which she was defiled. condom used by the Appellant and that this could only mean that she was traumatized by the events of that day which remained imprinted in her mind. It was their further submission that although the medical evidence did not conclusively prove that penetration had occurred, the medical officer formed an opinion that penetration had indeed occurred. They added that this piece of evidence was corroborated by the evidence of PW2 and PW3 who both testified that the victim was in pain and was not walking properly and that her vagina was not normal.

27. PW2, RN, the victim's aunt, testified that she saw the victim walking with her legs apart and on inquiry, the victim told her that S (the Appellant) had defiled her.

28. PW3, a village elder, testified that she looked at the victim's private parts and noted that her vagina was red.

29. PW4, Mogesi Nyaanga, the Clinical Officer testified that he examined the victim and noted that her hymen was broken even though not freshly broken. He also found that she had a Urinary Tract Infection (UTI) but that the victim's genitalia was normal. He produced the P3 Form (P.Exh1) which I have also examined and noted that a high vaginal swab (Hv) was conducted and no pus cells and or spermatozoa were present, save for an old broken hymen.

30. From my analysis of the medical evidence, it is clear that the victim had been previously defiled because the Clinical Officer testified that her hymen was broken but not fresh and that during the examination, her genitalia was normal. At the same time, he stated that the UTI could have been caused by poor hygiene and not necessarily penetration. I note that the evidence of the medical officer was not conclusive as to whether the victim had recently been penetrated despite the fact that he examined her a day after the incident.

31. The trial court observed as follows regarding penetration: -

> " The court read the medical documents adduced by PW4. The P3 form and the treatment notes state exactly what PW4 told the court. That is, the genitalia had no injuries save for the broken hymen which was not freshly broken. The laboratory results equally returned a negative finding. Hence the medical evidence on record does not conclusively proof (sic) as to whether or not there was penetration."

32. Upon finding that the medical evidence was inconclusive proof of penetration, the trial court went ahead to consider other evidence to ascertain penetration and held as follows: -

> " PW1 gave a detailed account as to how she was defiled on 5th June 2020. PW2 and PW3 corroborated her evidence. PW2 saw her walking in pain, with her legs apart while PW3 examined her and saw that her vagina was red in colour. Of course, this court appreciates that the vagina had not literally turned red and that PW3 is not a medical expert, but she noticed that the colour was not normal. To the mind of the court, the evidence of PW1, PW2 and PW3 proves that indeed there was penetration of PW1's vagina."

33. My finding is that the mere fact that the medical evidence was not conclusive in determining penetration does not necessarily connote that the offence was not committed as the court was still under an obligation to consider other evidence in determining the case.

34. Section 124 of the *Evidence Act* provides as follows: -

> Notwithstanding the provisions of Section 19 of the Oaths and Statutory Declaration Act, where the evidence of the victim admitted in accordance with that section on behalf of the Prosecution in the proceedings against any person for an offence, the accused shall not be liable to be convicted in proceedings against him unless it is corroborated by other evidence in support thereof implicating him.
>
> Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offense, the court shall receive the evidence of the alleged victim and proceed to convict the accused person, if for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

35. In *Samuel Kilonzo Musau v Republic* [2014] eKLR, the Court of Appeal held as follows regarding Section 124 of the *Evidence Act*: -

> " The effect of the proviso to section 124 is to create, in cases of sexual offences, an exception to the general rule that an accused person cannot be convicted on the uncorroborated evidence of a child of tender years. (See Denis Obiri v Republic, Cr App No 279 of 2011 Jacob Odhiambo Omumbo v Republic, Cr App No 80 of 2008 (Kisumu), and Mohamed v Republic (2006) 2 KLR 138. In the latter case, this Court stated emphatically:
>
> > 'It is now settled that the Courts shall no longer be hamstrung by requirements of corroboration where the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful."

36. PW1 testified as follows on the circumstances under which she was defiled: -

> " I had gone near our fence. Then I met S on the road. He did not speak to me. He placed me on his back and took me to a maize plantation. The maize plantation was nearby. It belongs to Michira. It is near our home. At the maize plantation, "S alinifanyia tabia mbaya". S removed my skirt and my inner pants. S removed his trouser, only one (1) leg of his trouser. Then he placed something like a balloon on his "susu". He placed the balloon on his susu while he removed his trouser. He removed the balloon from his pocket. He inserted his susu inside my private parts. N/B witness points to her vagina.
>
> S got hold of my neck and removed my clothes and "akanifanyia tabia mbaya". At the time I had slept on the ground facing down. He finished and put on his clothes. He went to his home and I put on my skirt. I was in pain. I could not walk properly. I went home and told my mother what had happened."

37. From the above extract of the complainant's testimony it is clear that the Appellant was well known to her going by the fact that she identified him by his name, Samuel. I note that the complainant's testimony was consistent and compelling. The complainant provided a blow by blow account on how the Appellant carried her to the maize plantation, removed her clothes, pinned her down, removed his trouser (partly), wore a condom and defiled her. I am satisfied that the victim was a truthful witness. I find that at her tender age of 8 years, it is possible that she did not know what a condom is thus explaining her description of a condom as a balloon. My take is that such a vivid description of the sequence of events leading to her sexual assault leaves no doubt in my mind that the complainant was truthful. I find that the second ingredient of penetration was proved to the required standards.

Identification

38. The Appellant submitted that the sole evidence of the victim, with respect to identification, ought to have been considered with great caution because she said that the Appellant carried her on his back to the maize plantation such that it would have been impossible to recognize him. He urged the court to examine the evidence of recognition carefully to satisfy itself that it was free from the possibility of error. He cited the case of *Wamunga v Republic* (1989) KLR 424 and *Maina & 3 others v Republic* (1986) eKLR where the Court held that evidence of recognition ought to be carefully examined before it can be relied on to convict an accused.

39. The Respondent, on the other hand, submitted that the minor positively identified the Appellant as the person who had defiled her and that the witnesses confirmed that they knew the Appellant as a resident of their location.

40. As I have already stated in this judgment, the complainant testified that the Appellant was well known to her and she identified him by the name Samuel. The victim stated that she knew the Appellant because she often saw him along the road and that he lived near their house. PW2 corroborated this testimony. I find that this was evidence of recognition and not merely identification. In *R v Turnbull and others* (1979)3 All ER 549 the court held that recognition may be more reliable than the identification of a stranger but even so, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

41. I have carefully examined the testimony of the victim and the circumstances of the case regarding the time when the offence was committed. It is my finding that the offence was committed during the day and there was therefore sufficient lighting that made it possible for the complainant to identify and recognize her assailant. She stated that the incident took place after lunch at about 6pm and that she could clearly see a person even at a distance.

42. I am satisfied that the conditions prevailing during the attack made it possible for the complainant positively identify the Appellant and this explains why she was able to give a graphic description of how her assailant removed a condom and used it during the act. It is clear that she could also properly see and recognize her assailant whom she positively identified as the Appellant and called by the name - Samuel.

43. I am therefore satisfied that the third ingredient of identification was proved.

Appellant's Defence

44. The Appellant submitted that the trial court did not consider his defence and did not to give reasons for the same. On its part, the Respondent submitted that the Appellant did not properly canvass his alibi evidence neither did he produce any evidence to prove his assertion that the complainant's aunt had a grudge against him. It was also submitted that the Appellant was afforded adequate opportunity and facilities before the trial court including a defence Counsel who made two applications on his behalf.

45. I have considered the Appellant's defence at the trial court. He denied committing the offence and stated that he had on the material date gone for a walk with his cousin and another person before returning home at 11.00 p.m. In other words, the Appellant presented alibi evidence.

46. I however note that his alibi defence only came up at the defence stage and that he did not call any of the people he was allegedly with on the material day to corroborate his testimony. It is trite that alibi defence ought to be raised early enough to enable the Prosecution to look into its veracity and avoid subjecting the wrong person to an arduous criminal trial. Indeed, the Court of Appeal sitting in Kisumu in the case of *Erick Otieno Meda v Republic* [2019] eKLR outlined the principles for considering alibi evidence thus: -

> " In considering an alibi, we observe that:
>
> a. {{An alibi needs to be corroborated by the other witnesses,}} and not just a mere regurgitation of the events from the accused's point of view.
>
> b. An alibi defence needs to be introduced at an early stage so as to allow it to be tested, especially during cross-examination of the trial.
>
> c. The alibi defence or evidence may often rest on the credibility of the accused and the reliability of the evidence that he or she has presented in court.

47. The accused does not need to prove the alibi, but the prosecution must have presented its case that the accused is guilty beyond a reasonable doubt so as to allow the alibi to fail. (See *Mhlungu - v - S* (AR 300/13) [2014] ZAKZPHC 27 (16 May 2014)." (Emphasis added).

48. My finding is that there was compelling evidence to prove that the Appellant defiled the complainant which evidence was not dislodged by the mere claim that the Appellant was not at the scene of crime. I find that the prosecution discharged its legal burden of proof and adequately proved the offence of defilement to the required standard which is proof beyond reasonable doubt. I, therefore, uphold the conviction by the trial court.

Whether the sentence is legal, just and appropriate

49. The offence of defilement of a child below the age of 11 years old attracts a minimum mandatory sentence of life imprisonment. This is the sentence that was meted by the trial court. The Appellant submitted that the mandatory nature of sentences had been declared unconstitutional as it fettered the court's discretion in considering the personal circumstances of the accused and denied him the opportunity to mitigate contrary to sections 329 and 216 of the *Criminal Procedure Code*. He also argued that his constitutional rights under Articles 50(2) (4), 27 (1) (2), 25 (c) of the *Constitution* were infringed. He cited the case of *Guyo Jarson Guyo v Republic*, Petition No 6 of 2018, (2018) eKLR where the court considered the circumstances of the case and the principles in the Judiciary Sentencing Policy Guidelines in reducing the sentence.

50. The Respondent, on the other hand, submitted that the sentence of life imprisonment meted by the trial court was legal and just owing to the victim's age. The Respondent urged the court not to interfere with the sentence while relying on the decision in *Ngao v Republic*, Criminal Appeal No 5 of 2020 (2021) eKLR and *Juma Abdallah v Republic*, Criminal Appeal No44 of 2018 where it was held that the case of *Francis Karioko Muruatetu and Another v Republic* (2021) eKLR did not invalidate mandatory sentences.

51. The objectives of sentencing were outlined in the *Judiciary Sentencing Policy Guidelines* of 2016 at page 15, paragraph 4.1. as follows: -

    1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

    2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

    3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

    4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

    5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct.

52. Sentence must also reflect the seriousness of an offence and must be proportionate to the crime committed. (See the decision of Howie J. Grove and Barn JJ in *R. v Scott* (2005) NS WCCA 152). The question which arises is whether the trial magistrate erred in passing the mandatory sentence as stipulated by section 8 (2) of the Act and whether the same was excessive.

53. In *Gedion Kenga Maita v Republic*, Criminal Appeal No. 35 of 1997 (UR), the Court of Appeal in explaining how to deal with mandatory sentences stated thus:-

> "...We are not saying that a court has no power to impose a sentence of life: a court can do so depending on the circumstances of a particular case which circumstances must include the circumstances under which the offence itself was committed, the circumstances of the accused person such as whether he is a first offender, how long he has been in prison awaiting trial and things of that nature."

54. It follows then that such mandatory sentences are still legal and may be meted if the circumstances of a case warrant as such.

55. In a recent decision rendered by the Court of Appeal at Malindi in *Julius Kitsao Manyeso v R* Criminal Appeal No 12 of 2021, where it was held that mandatory life sentence is unconstitutional and inhuman owing to its indeterminate nature and the fact that it denies the convict the opportunity to be heard in mitigation. The court rendered itself as follows: -

> "In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under Article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application nos. 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.....
>
> We are equally guided by this holding by the Supreme Court of Kenya, and in the instant appeal, we are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence."

56. In the present case, I note that the Appellant presented his mitigation before the trial court where he stated that he is ailing from HIV and desired to be reunited with his family.

57. I have considered the circumstances of this case the Appellant's mitigation and the nature of the offence in question. Guided by the decision in the *Julius Kitsau Manyeso case* (*supra*), I find that it will be necessary to disturb the life sentence imposed by the trial court and in its place, sentence the Appellant to 20 years imprisonment.

58. In conclusion, I find that this appeal succeeds, albeit partly, on sentence. The appeal on conviction is dismissed and the conviction upheld. The appeal on sentence succeeds. Consequently, the sentence of life imprisonment is set aside and in its place, a sentence of 20 years imposed on the Appellant. The 20 years sentence shall take into account the period, if any, that the Appellant stayed in remand custody while awaiting his trial.

59. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 13TH DAY OF JULY 2023.

W. A. OKWANY

JUDGE