



**Mwangi v Republic (Criminal Appeal E009 of 2023)
[2023] KEHC 23404 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E009 OF 2023
AC MRIMA, J
OCTOBER 12, 2023**

BETWEEN

ANDREW KAMAU MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal on sentence by Hon. A. Kassim, Resident Magistrate in Kitale Chief Magistrate's Court Sexual Offence Case No. 233 of 2020 delivered on 27th January, 2023)

JUDGMENT

1. The Appellant herein, Andrew Kamau Mwangi, was charged with the offence of Defilement contrary to Section 8(1)(2) of the *Sexual Offences Act*. 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 an appeal being High Court at Kitale Criminal Appeal No E010 of 2022. This Court allowed the appeal on sentence and ordered that the Appellant be re-sentenced by the trial Court.
3. On 27th January, 2023, the Appellant was re-sentenced to 18 years imprisonment. The Court considered the fresh mitigations.
4. The Appellant lodged the instant appeal against the re-sentencing.
5. In his submissions, the Appellant claimed that the sentence was very harsh and that he was ailing. He prayed for a lesser sentence preferably a non-custodial sentence. A Pre-Sentence Report dated 18th January, 2023 recommended a non-custodial sentence by way of probation.
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 Court considered the age of the victim, the period the Appellant had been in custody and the general circumstances of the case and eventually declined a non-custodial sentence.
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 29th 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.
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. This file is hereby marked as Closed.Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 12TH DAY OF OCTOBER, 2023.

A. C. MRIMA

JUDGE

Judgment delivered virtually and in the presence of: -

Andrew Kamau Mwangi, 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.

