



**Pushen v Republic (Criminal Appeal E004 of 2024)  
[2024] KEHC 13418 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13418 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL APPEAL E004 OF 2024  
RPV WENDOH, J  
OCTOBER 25, 2024**

**BETWEEN**

**JULIUS PUSHEN ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Julius Pushen was convicted by the SPM Kapenguria court for the offence of defilement contrary to section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. In the Alternative, he faced a charge of committing an Indecent Act with a child contrary to section 11(1) of the Sexual Offence Act.
2. The particulars of the charge are that on 30<sup>th</sup> August, 2015 at Chepareria Location of West Pokot County, caused his penis to penetrate the vagina of T.C a girl aged thirteen (13) years or that he touched the girl's vagina with his penis.
3. I have seen the grounds of appeal and submissions filed in court on 25/10/2023. He does not challenge the conviction but only the sentence. He claimed to be relying on the Judicial guidelines on sentencing. He also relied on *Muruatetu V. Republic* (2017) eKLR. He urged that minimum mandatory sentences be done away with, that he has been rehabilitated, learnt skills to help him start afresh. He also submitted that he has hypertension and ulcers and he regrets his actions. He urged the court to exercise its discretion in resentencing him.
4. The Prosecution did not file any written submissions as required of them but the court went ahead to consider the appeal.
5. I have looked at the history of this case. The appellant first filed CRA 8/2016. Justice Githinji heard the appeal and dismissed it on 28/9/2016.



6. The appellant then filed a Constitutional petition E016 /2022 in which Judge Mrima rendered his Judgment on 13/10/2022 and ordered a resentence of the appellant. On 17/2/2023, the Honourable Chief Magistrate resented the appellant to twenty (20) years imprisonment.
7. Thereafter, the appellant filed Constitutional petition E003/2023, seeking sentence review.
8. The appellant has now filed this appeal seeking reduction of sentence.
9. Having been heard by Judge Githinji on appeal, this court is functus officio. The appellant cannot come back to this court on appeal again
10. Further, the appellant came for sentence review and Judge Mrima ordered that the resentence be done by the trial court and it was done. The appellant cannot come to this court again. If the appellant feels aggrieved, he should move to Court of Appeal. This appeal is an abuse of the court process and is hereby dismissed.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 25<sup>TH</sup> DAY OF OCTOBER 2024.**

**R. WENDOHO**

**JUDGE**

Judgment delivered virtually in the presence of

Mr. Majale for the State.

Appellant- Present

Juma/Duke – Court Assistants

