



**Koech v Republic (Criminal Appeal E008 of 2023)
[2024] KEHC 14216 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL APPEAL E008 OF 2023
JRA WANANDA, J
NOVEMBER 15, 2024**

BETWEEN

JAMES KIPSANG KOECH APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This Appellant was charged in Eldoret Senior Principal Magistrates' Sexual Offences Case No. E019 of 2022 with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#), No. 3 of 2006. The particulars of the charge were that, the Appellant, on 1/05/2022 at Elgeyo Marakwet County, intentionally and unlawfully caused his penis to penetrate the vagina of GJ, a girl aged 14 years. He was also charged with the alternative charge of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The Appellant pleaded not guilty to the charges and the case then proceeded to full trial in which the prosecution called 4 witnesses. At the close of the prosecution's case, the Court found that the Appellant had a case to answer and placed him on his defence. The Appellant gave a sworn statement and called 1 witness. By the Judgment delivered on 28/2/2023, the Appellant was convicted on the main charge and sentenced to serve 20 years imprisonment.
3. Dissatisfied with the decision of the trial Court, the Appellant filed this appeal on 07/3/2023, against both conviction and sentence on the 4 grounds reproduced verbatim as follows:
 - i. That the trial court erred by convicting the appellant without seeing that his right to a fair trial under article 25(c), 47(1), 49(1)(f), 50(2),(e),159(2)(b) of [the Constitution](#) of Kenya 2010 - Section 33 and 108 of the CPC were violated.
 - ii. On failing to recite the provisions of section 200(3) of the CPC as required by the law.



- iii. That the trial magistrate erred by convicting and sentencing the appellant without proving the evidence of the complainant.
- iv. That the trial court dismissed (my) defence without considering the prosecution evidence in violation of section 196(1) of the CPC

Prosecution evidence before the trial Court

4. PW1 was JKK, the minor-victim's, father. He testified that he knew the Appellant as he did manual jobs around the area, that the minor was born on 24/07/2008, a Grade 3 student at [particulars withheld] school for the deaf and that she was 14 years old at the time of the incident. He stated that on 01/05/2022, he was at the Center when one S informed him that he had seen "Magic" (the Appellant) walking with his daughter, that he (PW1) then followed them and saw them entering a neighbour's house through the window. He testified that the door had been locked, that he went and called witnesses and when they opened the window, they saw the Appellant and the minor in bed, and that the Appellant attempted to flee but was arrested by members of the public. He testified that they then reported the matter to the Assistant Chief, and then took the minor to the hospital where they were issued with a P3 Form and that the doctor confirmed that the minor had been defiled.
5. PW2 was WKT. He testified that he is a neighbour to PW1, that on 1/5/2022, he was at the Center when PW1 came and informed him that he had seen PW1's daughter with the Appellant entering a house through the window, that he went to the house and saw the Appellant sleeping on the bed, that the Appellant denied doing anything to the child and attempted to escape but they managed to arrest him. In cross examination, he stated that the minor is deaf and dumb.
6. PW3 was Corporal Rael Ndiema, a police officer attached to Kaptagat Police Station. She testified that on 02/05/2022, she minuted this case for investigations, that the Appellant was arrested by members of the public and that the minor was deaf and dumb. She produced the minor's birth certificate. She stated that she then issued a P3 Form which was filled and she charged the Appellant with the offence. In cross-examination, she denied that the Appellant told her that he had a land dispute with the minor's family and also denied that the Appellant stayed in the cells for 9 days. In Re-examination, she stated that there was no need for an interpreter as the minor was deaf and dumb.
7. PW4 was Dr Irene Simiyu, a doctor at Moi Teaching and Referral Hospital. She testified that the minor came to the hospital on 2/05/2022 with a history of defilement, that on examination, she found that the minor had a fresh tear at the vulva and anal opening and that she had redness in the labia minora caused by friction. She then produced the P3 Form. In cross-examination, she testified that one can differentiate between a recent and an old wound and further, that freshness stays up to 72 hours, that the minor was defiled on 1/05/2022 and she examined her on 2/05/2022, and signed the P3 Form on 4/05/2022. She testified that she was not given any clothing and that since the minor was deaf and dumb, they used a Counsellor trained in dealing with such people to communicate with the minor.

Defence evidence

8. The Appellant gave sworn testimony as DW1. He testified that on 01/5/2022, he went to his neighbour Paul to seek for employment as a herder, that he was herding cows when 2 people came and asked him whether he had seen a young girl, that when he told them that he had not, they demanded that he avails the girl, that a large crowd then gathered and he was taken to the police. He pointed out that the minor never recorded a statement, that he stayed in the cells for 9 days and that the doctor lied in Court.



Hearing of the Appeal

9. The parties were then given liberty to file written Submissions. While the State, through Prosecution Counsel Calvin Kirui filed its Submissions on 4/06/2024, up to the time of concluding this Judgment, I had not come across any Submissions filed by the Appellant.

Respondents' Submissions

10. Prosecution Counsel cited Section 8(1) and (3) of the *Sexual Offences Act* and also the case of George Opondo Olunga v Republic [2016] and submitted that the ingredients of the offence of defilement are "identification" or "recognition" of the offender, "penetration" and the "age" of the victim. He appreciated that the prosecution is under a duty to establish or prove all the said ingredients beyond reasonable doubt and that such duty never shifts to the accused.
11. In respect to "identification", he submitted that PW1 and PW2 testified that they followed the Appellant who was with the minor, and that the Appellant and the minor entered into a house through the window and were busted while in bed. He submitted further that the 2 witnesses knew the Appellant and therefore "identification" was by "recognition". Regarding "penetration", Counsel cited the definition provided Section 2 of the *Sexual Offences Act*. He submitted that the minor did not testify due to being deaf but that the evidence of the clinical officer who examined her showed that she had a fresh tear at the posterior fourchette and had redness caused by friction on the labia minora, that these findings were recorded in the P3 Form and that this evidence proved beyond reasonable doubt that there was defilement. In respect to "age", Counsel submitted that the Investigating officer produced the minor's birth certificate which indicated that the minor was born on 02/05/2022, and that the incident happened on 01/05/2022 meaning that the minor was 14 years old at the time thereof. It was his further submission that the Appellant did not challenge this evidence, that no contrary evidence was produced and that as such, the minor's age was proved. Counsel also contended that the Appellant's defence was a mere denial which was untrustworthy and that the trial Court rightfully held that the prosecution had discharged its burden of proof. He submitted further that contrary to the Appellant's allegation that the Court failed to accord him a fair trial, the record shows that the principles of fair hearing were adhered to.
12. Regarding Section 200(3) of the Criminal Procedure Code, Counsel averred that the provision is not couched in mandatory terms and further, that it is not a requirement of law that a case must start de novo. He cited the case of Ndegwa v Republic (1985) KLR and submitted that Section 200(3) should be invoked where justice demands and both parties demand, not just the accused. He submitted that in this case, the plea was taken before Hon. Ateya and thereafter, there were several mentions before Hon. Kutwa, that on 13/10/2022 the matter was taken over by Hon. V Karanja before whom PW1 and PW2 testified on 17/01/2023 and PW3 and PW4 testified on 14/02/2023 and that this therefore means that all the prosecution witnesses testified before the same Magistrate.
13. In conclusion, Counsel submitted that the evidence of all the prosecution witnesses was consistent and had no doubts or contradictions and that the evidence was credible and reliable.

Determination

14. As a first appellate forum, this Court is obligated to revisit and re-evaluate the evidence afresh, assess the same and make its own conclusions bearing in mind that the trial Court had the advantage of hearing and observing the demeanour of the witnesses (See Okeno vs. Republic [1972] E.A 32).



15. Before I delve further into determining this Appeal, I note that in his Grounds of Appeal, the Appellant has alleged that Section 200(3) of the Criminal Procedure Code was not adhered to. That Section provides as follows:

“where a succeeding Magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be re-summoned and reheard and the succeeding Magistrate shall inform the accused person of that right”.

16. Upon perusing the record, I agree with the Prosecution Counsel that although the plea was taken before Hon. Ateya and thereafter, the case came up before Hon. Kutwa for Mention on several occasions, none of the witnesses testified before these 2 Magistrates. It is clear from the record that PW1-PW4 all testified before Hon. V Karanja. The matter was therefore not part-heard when it was taken over by Hon. V. Karanja. Section 200(3) aforesaid was not therefore applicable.

17. The two issues that therefore arise for determination in this Appeal are the following:

- a. Whether the defilement charge against the Appellant was proved beyond reasonable doubt.
- b. Whether the sentence of 20 years imprisonment imposed against the Appellant was justified.

18. I now proceed to analyze and determine the said issues.

Whether the charge of defilement was proved case beyond reasonable doubt

19. Sections 8(1) and 8(3), respectively, of the [Sexual Offences Act](#) provide as follows:

“8.

- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- (3)) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

20. From the foregoing, it is agreed that for the charge of defilement to stand, the Prosecution must prove 3 ingredients, namely, the “age” of the victim (must be a minor), “penetration” and proper “identification” of the perpetrator (see *George Opondo Olunga vs. Republic* [2016] eKLR

21. Although proof of the “age” of the victim has not been expressly challenged in this Appeal, there is no harm in analyzing the same nevertheless.

22. The importance of proving “age” was reiterated in the Court of Appeal case of *Kaingu Kasomo vs. Republic*, Criminal Appeal No. 504 of 2010, in which the following was stated:

“Age of the victim of sexual assault under the [Sexual Offences Act](#) is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim.”



23. The Court of Appeal further stated in the case of Hadson Ali Mwachongo v Republic [2016] eKLR, that:

“The importance of proving the age of the victim of defilement under the Sexual Offences Act by cogent evidence cannot be gainsaid. It is not in doubt that the age of the victim is an essential ingredient of the offence of defilement and forms an important part of the charge because the prescribed sentence is dependent on the age of the victim. In Alfayo Gombe Okello v Republic Cr. App 203 of 2009 (Kisumu) this Court stated as follows: -

“In its wisdom, Parliament chose to categorize the gravity of that offence on the basis of age of the victim, and consequently the age of the victim is a necessary ingredient of the offence which ought to be proved beyond reasonable doubt. This must be so because dire consequences flow from proof of the offence under section 8(1)”.

24. In respect to the manner of proving “age”, in the case of Francis Omuroni v Uganda Court of Appeal; Criminal Appeal No. 2 of 2000, the following was stated:

“In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may also be proved by birth certificate, the victim’s parents or guardian and by observation and common sense”

25. In this case, the age of the victim was proved by production of the certificate of birth. The same indicated that the victim was born on 24/07/2008 and the incident having been alleged to have happened on 1/05/2022, it means that indeed, the victim was about 14 years old at the time thereof. Age was therefore sufficiently proved.

26. Regarding “penetration”. Section 2(1) of the Sexual Offences Act defines it as follows:

“the partial or complete insertion of the genital organs of a person into the genital organ of another person.”

27. In the case of Mark Oiruri Mose v R [2013] eKLR the Court of Appeal stated that:

“Many times, the attacker does not fully complete the sexual act during commission of the offence. That is the main reason why the law does not require that evidence of spermatozoa be availed. So long as there is penetration whether only on the surface, the ingredient of the offence is demonstrated, and penetration need not be deep inside the girl’s organ.”

28. In this case, medical evidence was provided by a doctor. She testified that she examined the minor on 2/05/20022 and found that she had a fresh tear on the posterior fourchette (vulva and anal opening) and redness caused by friction on the labia minora. The incident having occurred on 1/05/2022, this examination was therefore done on the following day. According to her, the injuries were confirmation of defilement. This evidence not having been controverted, it is apparent that the trial Magistrate was correct in her finding that “penetration” was proved.

29. On the issue of “identification”, the Court of Appeal in the case of Cleophas Wamunga v Republic [1989] eKLR expressed itself as follows:

“Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger.



Whenever the case against a defendant wholly depends or to a great extent on the correctness of more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification”.

30. It is therefore clear that “identification” of an accused person in these kinds of cases is crucial. The Court of Appeal in the case of *Kariuki Njiru & 7 others vs Republic*, [2001] eKLR further restated the same in the following terms:

“Law on identification is well settled, and this court has from time to time said that the evidence relating to identification must be scrutinized, and should only be accepted and acted upon if the court is satisfied that the identification is positive and free from the possibility of error.”

31. Further, in the case of *Anjononi & Others vs Republic* [1981] KLR 594, it was stated that:

“recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other.”

32. It is therefore true that “recognition” is regarded as more reliable than “identification” of a stranger. However, caution must still be taken where witnesses purports to recognise someone that they know since even in such cases, mistakes may sometimes be made. (see *R vs. Turnbull & Others* [1976] 3 ALL ER 549).

33. In this case, the Appellant’s “identification” was by way of “recognition”. The factors to be considered with respect to “identification” were set out in the case of *R vs Turnbull & Others* (1976) 3 ALL ER 549 in the following terms:

“... The Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have with the Accused under observation? At what distance? In what light? Was the observation impeded in any way...? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? how long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?... Recognition may be more reliable than identification of a stranger but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.”

34. In this case, the Appellant was identified by PW1 and PW2 who knew him well. In fact, according to PW1, the Appellant’s nickname was “Magic”. PW1 secretly followed him to the house where he had “sneaked” the minor through the window (which act he witnessed) and called neighbours who came and arrested the Appellant. The Appellant was therefore arrested by members of the public at the scene of crime. The witnesses’ evidence was therefore corroborated. Further, the incident took place during the day and the possibility of mistaken identity would therefore be minimal. I am therefore satisfied that the trial Magistrate was right in her finding that the Appellant was positively identified.

35. I note that the minor did not testify and this, according to the Prosecution, was because she was deaf and dumb. Needless to state, this is not a convincing reason since our laws have adequate provisions



permitting persons with any such disabilities and/or those who are vulnerable, to testify through intermediaries (see the Court of Appeal in the case of *MM v Republic* [2014] eKLR)

36. In regard thereto Article 50(7) of *the Constitution* provides as follows:

“In the interest of Justice, a Court may allow an intermediary to assist a complainant or an accused person to communicate with the Court.”

37. Section 31 of the *Sexual Offences Act*, then also provides as follows:

“(1) A court, in criminal proceedings involving the alleged commission of a sexual offence, may declare a witness, other than the accused, who is to give evidence in those proceedings a vulnerable witness if such witness is -

- (a) the alleged victim in the proceedings pending before the court;
- (b) a child; or
- (c) a person with mental disabilities.

(2) The court may, on its own initiative or on request of the prosecution or any witness other than a witness referred to in subsection (1) who is to give evidence in proceedings referred to in subsection (1), declare any such witness, other than the accused, a vulnerable witness if in the court's opinion he or she is likely to be vulnerable on account of —

- (a) age;
.....
- (c) trauma;
- (e) the possibility of intimidation;
.....;
- (i) the relationship of the witness to any party to the proceedings;
- (j) the nature of the subject matter of the evidence; or
- (k) any other factor the court considers relevant.

(3) The court may, if it is in doubt as to whether a witness should be declared a vulnerable witness in terms of subsection (2), summon an intermediary to appear before the court and advise the court on the vulnerability of such witness.

(4) Upon declaration of a witness as a vulnerable witness in terms of this section, the court shall, subject to the provisions of subsection (5), direct that such witness be protected by one or more of the following measures -

- (a) allowing such witness to give evidence under the protective cover of a witness protection box;
- (b) directing that the witness shall give evidence through an intermediary;
- (c) directing that the proceedings may not take place in open court;



- (d) prohibiting the publication of the identity of the complainant or of the complainant’s family, including the publication of information that may lead to the identification of the complainant or the complainant’s family; or
- (e) any other measure which the court deems just and appropriate.
- (5)

38. The omission to arrange for the complainant to testify, alone, could have led to the Appellant being let “off the hook” had there been insufficient evidence against the Appellant. This, in my view, was abdication of duty by the prosecution. Fortunately, the rest of the evidence was strong enough to lead to the Appellant’s conviction.

39. Accordingly, I find that the trial Court had before it, sufficient material to support the finding that the prosecution proved its case beyond reasonable doubt. I cannot find any ground to suggest that the trial Court erred in convicting the Appellant for the offence of defilement. The appeal on conviction therefore lacks merit and is hereby dismissed.

Whether the sentence of 20 years imprisonment was justified

40. The applicable principles in determining sentence on appeal were restated by the Court of Appeal in *Bernard Kimani Gacheru v Republic* [2002] eKLR, in the following terms:

“It is now settled law, following several authorities by this court and the high court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist”.

41. In applying the above guidelines, I observe, as already cited above, that regarding sentence, Section 8(3) of the *Sexual Offences Act* provides as follows:

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

42. In view of the above, it is clear that the sentence imposed by the trial Court, although the minimum prescribed, was within the law. Nevertheless, it is also true that there has recently been emerging jurisprudence that strict adherence to mandatory or minimum sentences should now be discouraged and that Courts should retain the discretion to depart from such sentences. In connection to this, the Supreme Court in the case of *Francis Karioko Muruatetu and Another vs Republic* [2017] eKLR, while dealing with a case of murder, stated as follows:

“(66) It is not in dispute that article 26(3) of *the Constitution* permits the deprivation of life within the confines of the law. We are unconvinced that the wording of that article permits the mandatory death sentence. The pronouncement



of a death sentence upon conviction is therefore permissible only if there has been a fair trial, which is a non-derogable right. A fair hearing as enshrined in article 50(1) of *the Constitution* must be read to mean a hearing of both sides. A murder convict whose mitigation circumstances cannot be taken into account due to the mandatory nature of the death sentence cannot be said to have been accorded a fair hearing.”

43. The Supreme Court then directed the Attorney General, the Director of Public Prosecutions and other relevant agencies to prepare a detailed professional review in the context of the Muruatetu Judgment with a view to setting up a framework to deal with sentence re-hearing cases. The Attorney General was then given 12 months to submit a progress report on the same.
44. On the strength of the Muruatetu decision and reasoning, the High Court and even the Court of Appeal routinely reviewed mandatory minimum sentences imposed on convicts for different offences other than murder, including for sexual offences and robbery with violence. Examples are the Court of Appeal decisions in the case of Dismas Wafula Kilwake vs Republic [2018] eKLR, the case of GK v Republic (Criminal Appeal 134 of 2016) [2021] KECA 232 (KLR), and also the case of Joshua Gichuki Mwangi vs Republic [2022] eKLR. I may also mention the oft-cited decision of Odunga J (as he then was), in the case of Maingi & 5 others *v Director of Public Prosecutions & another (Petition E017 of 2021)* [2022] KEHC 13118 (KLR).
45. However, by the clarification made by the same Supreme Court in its subsequent directions given in *Muruatetu & Another v Republic; Katiba Institute & 4 others (Amicus Curiae) (Petition 15 & 16 of 2015)* [2021] KESC 31 (KLR) (6 July 2021) (Directions), the Court made it clear that Muruatetu only applied to murder cases, and not to any other type of case, not even sexual offences.
46. Recently, just about 2 months ago, the Supreme Court reiterated and restated the above directions when dealing with an Appeal emanating under the Sexual Offence Act. This was in the case of *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023)* [2024] KESC 34 (KLR) (12 July 2024) (Judgment). In setting aside the decision of the Court of Appeal which had applied the Muruatetu reasoning in setting aside the mandatory minimum sentence of 20 years imprisonment imposed on an Appellant, the Supreme Court stated, inter alia, as follows:

“

“ 57. In the Muruatetu case, this court solely considered the mandatory sentence of death under Section 204 of the Penal Code as it is applied to murder cases; it did not address minimum sentences at all. Therefore, mandatory sentences that apply for example to capital offences, are vastly different from minimum sentences such as those found in the *Sexual Offences Act*, and the Penal Code. Often in crafting different sentencing for criminal offences, the drafters of the law in the Legislature, take into consideration a number of issues including deterrence of crime, enhancing public safety, sequestering of dangerous offenders, and eliminating unjustifiable sentencing disparities.

.....”

47. In view of the decision and guidelines expressly set out by the Supreme Court as above, this Court will be acting ultra vires were it to set aside the sentence of 20 years imprisonment on the sole basis that the same, being a mandatory minimum sentence stipulated by statute, is unconstitutional. As clearly spelt out by the Supreme Court, Muruatetu is not applicable to cases under the *Sexual Offences Act*.



48. My above observation does not however mean that I cannot determine the issue whether the sentence was manifestly excessive or harsh. In view thereof, I cite Majanja J, quoting the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR) in the case of Michael Kathewa Laichena & another v Republic [2018] eKLR, where stated as follows:

“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances.”

49. The Court in the Muruatetu Case also guided that, in re-sentencing, the following mitigating factors would be applicable; (a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and (h) any other factor that the Court considers relevant.

50. Similarly, in the case of Daniel Kipkosgei Letting Vs. Republic [2021] eKLR, the Court of Appeal pronounced itself as follows;

“With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.”

51. Applying the above principles to the facts and circumstances of this case, I have considered that the offence of defilement is a serious one. Even if the minor had seemingly “agreed” to the sexual act, in law, in view of her age, she was incapable of giving consent thereto. For these reasons, I agree that the Appellant merited a stiff punishment. He was also given the opportunity to mitigate, which he did by pleading for a lenient sentence. It was upon the trial Court to impose a sentence that is proportionate to the offence committed. Apart from being a minor, the victim also had the disability of being a deaf and dumb person, whom the Appellant, a 30 years old man with a wife and children of his own (as per his own mitigation) took advantage of and violated. The minor will no doubt bear the scars of the Appellant’s actions for the rest of her life. Considering the above circumstances, it is my reasoned conclusion that the trial Court meted out a sentence that is proportionate to the offence committed.

Final Order

52. In the circumstances, the Appeal fails against both conviction and sentence and is dismissed in its entirety.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF NOVEMBER 2024

WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Appellant present physically in open Court



N/A for the State

Court Assistant: Brian Kimathi

