



**Abdullahi v Republic (Criminal Appeal E029 of 2023)
[2024] KEHC 17070 (KLR) (Crim) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 17070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E029 OF 2023
AB MWAMUYE, J
DECEMBER 17, 2024**

BETWEEN

YUSSUF ABDIRAHMAN ABDULLAHI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence of 25 years imprisonment in a case of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act No.3 of 2006 before HON. E. KANYIRI (PM) judgment delivered on 16/12/2022)

JUDGMENT

1. The Appellant was tried in Sexual Offence Case No. 26 of 2018 before the Chief Magistrates' Court at Nairobi. He was convicted of defilement contrary to Section 8(1) as read with section 8(3) of the [Sexual Offences Act](#), 2006 and, on 9 June 2024, sentenced to twenty-five (25) years' imprisonment. He now appeals only against sentence. The appeal was heard through written submissions.
2. The Trial Court found that the complainant, a child aged fourteen years, positively identified the Appellant, and that the medical evidence corroborated penetration. After a full trial, the Trial Court found the Appellant guilty and convicted him accordingly. Taking into account the mandatory minimum of twenty years under Section 8(3) and the aggravating circumstance that the Appellant was a trusted neighbour, the Trial Court imposed a term of 25 years.
3. Being aggrieved by the sentence, the Appellant filed the present appeal, arguing that the sentence imposed by the Court below was harsh and excessive.
4. The Appellant being dissatisfied with the judgment, filed a memorandum of appeal raising in substance these grounds:



- i. That the learned trial magistrate erred in law and fact in failing to consider the Appellant's mitigation.
- ii. That the sentence of 25 years was harsh and excessive given the Appellant was a first offender.
- iii. That the learned trial magistrate failed to consider that the Appellant was remorseful.
- iv. That the sentence should have considered the Appellant's personal circumstances.

Appellant's Submissions

5. The Appellant submits that the sentence of twenty-five (25) years' imprisonment imposed by the Trial Court is harsh and excessive in the circumstances. He contends that the Trial Court failed to exercise its discretion judiciously when it sentenced him beyond the statutory minimum of twenty years under section 8(3) of the *Sexual Offences Act*, without adequately justifying the additional five years. He argues that a more lenient sentence would have served the interests of justice, particularly considering his age and personal circumstances.
6. The Appellant further submits that he is a first-time offender who demonstrated remorse during the trial and at the sentencing stage. He pleaded for leniency, explaining his background and lack of previous criminal history. He argues that the Trial Court failed to give sufficient weight to his mitigation and instead focused solely on the seriousness of the offence, thereby disregarding the principle of individualized sentencing as emphasized in the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.
7. In addition, the Appellant contends that the Trial Court did not consider his potential for rehabilitation and reintegration into society. He urges this court to take a rehabilitative rather than purely punitive approach to sentencing, especially where the accused is young and has no previous brushes with the law. He submits that the Trial Court ought to have balanced the competing interests of justice and reformation, and that failing to do so resulted in a disproportionately harsh sentence.
8. The Appellant also submits that the sentence ought to have taken into account the period he spent in pre-trial custody. He relies on section 333(2) of the *Criminal Procedure Code* and the Court of Appeal's holding in *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR, which mandates sentencing courts to consider time already spent in custody. The failure of the Trial Court to make any reference to this period, he submits, rendered the sentence procedurally unfair and contrary to the law.
9. The Appellant prays that this honourable court reconsiders the sentence imposed and substitutes it with a lesser term that reflects the statutory minimum, his personal circumstances, and the time he has already spent in custody. He maintains that a reduced sentence would still meet the objectives of sentencing, including deterrence and retribution, while also upholding the principles of fairness and proportionality.
10. This court is enjoined under section 354(3)(b) of the *Criminal Procedure Code* to consider whether the sentence imposed was manifestly excessive or illegal. The guiding principle is that sentencing is discretionary, and an appellate court will only interfere if the Trial Court acted on a wrong principle or the sentence is manifestly harsh or excessive in the circumstances.
11. The legality of the 25-year sentence imposed on the Appellant must be considered against the statutory framework under which the conviction was made. The Appellant was convicted of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*, which provides a mandatory minimum sentence of twenty years' imprisonment for offenders who defile children aged between



twelve and fifteen years. The sentence of twenty-five years therefore falls within the legal parameters set by the law and is not illegal.

12. Whether the sentence is harsh or manifestly excessive depends on the surrounding facts and whether the Trial Court exercised its discretion judicially. Sentencing is a discretionary function, and appellate courts will only interfere where it is shown that the Trial Court applied wrong principles or imposed a sentence that is manifestly excessive in the circumstances. As held in *Wanjema v Republic* [1971] EA 493, a sentence may be interfered with where it is manifestly excessive or if the Trial Court failed to consider relevant factors. In this case, the sentence was five years above the statutory minimum, suggesting the court considered aggravating elements.
13. The Trial Court did take into account the seriousness of the offence and the vulnerability of the minor complainant. The aggravating circumstances included the complainant's age (15 years), the breach of trust involved, and the psychological harm likely to result from such a traumatic experience. The court, however, also considered that the Appellant was a first offender and had shown remorse. These factors point to a sentencing process that involved a proper balancing of mitigating and aggravating circumstances, as was commended in *Benard Kimani Gacheru v Republic* [2002] eKLR.
14. Comparative jurisprudence shows that sentences above the statutory minimum are common in similar cases. For instance, in *Gideon Kilonzo v Republic* [2021] eKLR, a 30-year sentence was upheld for a similar offence, while in *Stephen Gitau Njuguna v Republic* [2016] eKLR, a sentence of 25 years was confirmed. These decisions demonstrate that a 25-year term, while lengthy, is consistent with precedents where aggravating factors are present. It also serves the penological goals of deterrence, protection of vulnerable persons, and denunciation of sexual offences against minors.
15. In conclusion, the sentence of 25 years imposed on the Appellant is not illegal, nor can it be said to be harsh or manifestly excessive given the gravity of the offence and the circumstances under which it was committed. The sentence is within the prescribed legal limits, proportionate to the nature of the crime, and consistent with Kenyan sentencing trends in defilement cases involving minors. There is therefore no basis for interference by this appellate court on the ground of excessiveness.
16. Section 333(2) CPC commands that time spent in custody be taken into account. In *Ahamad Abolfathi Mohammed*(supra) the Supreme Court affirmed this duty. The sentencing notes (Record, p. 4) expressly state that "the sentence shall run from 12 March 2018 when the accused was first remanded." The Trial Court thus complied.
17. Even had the Trial Court been silent, this Court would be obliged to order the sentence to start from that date *Bethuel Muiruri v Republic* [2012] eKLR. Nonetheless, the impugned order is already in conformity.
18. Having considered the entire appeal, the submissions filed, and the law and also having re-evaluated, re-analysed and reconsidered the evidence afresh, the upshot of my findings above is as follows: the appeal against the sentence is hereby dismissed, the sentence of 25 years is hereby upheld and the sentence to start from the date the Appellant was arrested and remanded. The Appellant was arrested and placed in remand on 12 March 2018. That date is uncontested.
19. It is hereby so ordered and file closed accordingly.

It is so ordered. The file is closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH OF DECEMBER 2024.

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BAHATI MWAMUYE
JUDGE

