**Henry v Republic (Criminal Appeal E090 of 2023)**
**[2024] KEHC 15664 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15664 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MERU**

**CRIMINAL APPEAL E090 OF 2023**

**HM NYAGA, J**

**DECEMBER 5, 2024**

**BETWEEN**

**KAGENDO JERUSHA HENRY ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

## JUDGMENT

1. The Appellant was charged before the Chief Magistrate's Court at Isiolo with the offence of committing an indecent act with a child Contrary to Section 11(1) of the *Sexual Offences Act*.

2. The particulars are that on 28th March, 2021 at Isiolo County, she intentionally touched the buttocks, breasts and vagina of C.K.N a child aged 16 years, with her fingers.

3. At the conclusion of the trial, the accused was found guilty and was duly convicted and sentenced to eight (8) years imprisonment.

4. Aggrieved by the said judgment and the conviction, the Appellant has preferred this appeal vide the Petition of Appeal dated 27th June, 2023. She has relied on the following grounds:-

    1. That the learned Trial Magistrate erred in law and in fact by failing to find that the prosecution's case was marred with material inconsistencies.

    2. That the learned Trial Magistrate erred in law and in fact by failing to find that the complainant's family had a motive to frame the Appellant.

    3. That the learned Trial Magistrate erred in law and in fact by admitting electronic evidence without a certificate which is a mandatory requirement.

    4. That the learned Trial Magistrate erred in law and in fact by failing to analyse and consider the defence case while writing the impugned judgment.

5. That the learned Trial Magistrate erred in law and in fact by giving the Appellant a harsh sentence under the circumstances of the case.

6. That the learned Trial Magistrate erred in fact and in law by proceeding on wrong principles and misapprehending evidence and therefore arrived at a wrong decision.

5. Directions were given that the Appeal be canvassed by way of written submissions. The Appellant filed her submissions dated 22nd July, 2024 while the DPP filed theirs dated 14th June, 2024.

**Appellant's Submissions**

6. It was argued that the prosecution case before the trial court was marred with material inconsistencies discrepancies and doubts for instance, it was submitted, PW1 in her evidence in chief stated that the incident had been happening for 4 to 5 months, but in cross examination, she stated that the incident was form January 2021 to March 2021.

7. That PW1 had stated that the Applicant had started kissing her in the bathroom and the landlord saw them in the act, while PW2 stated that a neighbour went to the Appellant's house and found the two in bed.

8. It is further submitted that PW3's evidence contradicts the charges in that he said he saw the incident in February 2021, while the charge read 28th March, 2021. That his evidence that he saw the Appellant sucking the Complainant's breasts behind the door contradicted the evidence of PW1 that the incident occurred outside the bathroom. That there was report of fingering of the Complainant's vagina was ever reported, thus it was unsafe for the trial court to arrive at that conclusion.

9. On the question of contradictions, the Appellant relied on the case of Joseph Ateka Kiranga Vs Republic (2016) eKLR and Samuel Murangi Kamau Vs Republic (2005) eKLR. The Appellant further submitted that the Complainant's family had a motive to frame her. It was pointed out that the complainant did testify that on 28/01/2021, she found her mother and the Appellant exchanging words.

10. That the Appellant, in her evidence, did state that PW1's mother came to her place and started abusing her. It is submitted that PW1's mother then used the police to fabricate these charges.

11. The Appellant further submitted that the production of MFI 1-6, MFI 12, 1-4, MFI 1-3 1-16 and MFI 1-4 which were alleged text messages between the Complainant and the Appellant, were produced without compliance with Sections 78 and 106B of the *Evidence Act*, in that the certificate was produced.

12. The Appellant also faulted the Trial Magistrate for failing to consider her evidence in defence.

13. On sentence, the Appellant submitted that the Trial Magistrate proceeded on erroneous principles and meted upon the Appellant a sentence that was harsh. Reference was made to the case of Brian Nyachio Vs Republic (2022) eKLR.

14. In conclusion, the Appellant submits that the evidence adduced could not support a conviction and she urged the court to quash the conviction and sentence.

15. For the Respondent, it was submitted that there was ample evidence to show that the Appellant had been seducing the complainant, and even gifted her with a watch and radio. That PW2 peeped and saw the Appellant blowing kisses to the complainant. That the complainant's mother, who had become aware of the relationship between the Appellant and her daughter, had decided to relocate, but the Appellant still pursued her.

16. It was further submitted that the evidence was sufficient to convict the accused.

17. On sentence, the Respondent asked the court to consider that the Appellant had granted the Complainant into lesbianism and despite being told to keep off she continued to seek the Complainant.

18. In conclusion, the Respondent urged the court to dismiss the appeal, uphold the trial court's finding on both conviction and sentence.

19. This being a first appeal, this court is enjoined to independently re-evaluate the evidence adduced and came to its own conclusion. In Okeno Vs Republic [1972] EA 32 the principles applicable on appeal were set out as follows;

> " An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya vs. Republic (1957) EA. (336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala Vs. R. (1957) EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters vs. Sunday Post [1958] E.A 424."

20. Similarly, in Kamau Njoroge Vs Republic [1987] eKLR, the Court of Appeal stated;

> " As this court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well on the questions of fact as on questions of law, to demand a decision of the court of first appeal, and that court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and to make due allowance in this respect."

21. The evidence adduced at the trial was aptly summarised by the trial magistrate in her judgment. Therefore, I need not rehash in detail what every witness stated during the trial.

22. In summary, the evidence of the Complainant was that the Appellant had begun seducing her in the month of January 2021. That the Appellant had promised to take care of her more than any man could. That she started going to the Appellant's house and once there, the Appellant would hold her, kiss her and touch her private parts repeatedly. Her mother got suspicious and so she had them relocate to another house, but the accused continued to visit her. That on the material day, she had left the bathroom when she met the accused, who started kissing her. The landlord saw them and alerted her mother.

23. The complainant's further evidence was that the Appellant used to send her text messages and that wherever they met, the Appellant used to kiss her, finger her vagina and carless her breasts.

24. The Complainant's mother (PW2) told the Trial Court that the Appellant was her neighbour. That she had come to learn that whenever she left her house, her daughter would be called by the Appellant to her house. That at one time, a neighbour came and alerted her that he had found the Appellant and the Complainant in bed. On questioning the complainant, she stated that the Appellant was tutoring

her in mathematics. Eventually, the complainant did inform her what the Appellant used to do to her. She then went to the Appellant and asked her to keep away from her daughter, but to no avail. She moved out of the premises but the Appellant kept pursuing her daughter. She cited the incident where the Appellant came to her house. She went to make some drink and then decided to peep back at where the Appellant and the complainant were. She saw the two blowing kisses at each other.

25. PW2 stated that her daughter had a phone, which she had not bought for her, and that she used to send text messages to her daughter. She recounted how on the material day, the Landlord (PW3) alerted her that she had seen the appellant and the complainant kissing.

26. PW3 was the landlord to the complainant's mother. He stated that on the material date, which he did not specify but described it as February 2021, he was from the shower and he saw the Appellant and the complainant kissing each other. He reported the incident to the complainant's mother.

27. PW4 was a neighbour to both the Appellant and the Complainant. She stated that the complainant used to go to the Appellant's house for long hours whenever her mother was not around. She relayed this information to the complainant's mother. She never got to know what really happened inside the Appellant's house.

28. PW5 was the investigation officer. He stated how he received the complaint herein. He also retrieved text messages from two mobile phone number said to have been form the Appellant. After his investigations, he charged the Appellant.

29. In her defence, the Appellant stated that at the material time, which was during the Covid 19 restrictions, she was asked by her neighbours to coach their children for a fee. That the complainant's mother failed to pay her but she continued to tuition her. That at one time, the complainant's mother harled abuses at her and fought her. Later she was arrested.

30. DW2, Harriet Kendi stated that the Appellant and the Complainant's mother had fought over the latter's refusal to pay for tuition that the Appellant had conducted.

**Issues for Determination**

31. I am of the view that the issues that fall for determination can be unwrapped up as follows:-

    a. Whether the text messages were produced in contradiction of sections 78 and 1063 of the *Evidence Act*.

    b. Whether there was material contradiction in the prosecution case.

    c. Whether the court failed to consider the Appellant's defence.

    d. Whether the evidence was sufficient to support a conviction.

    e. Whether the sentence was harsh and excessive.

32. Section 78 of the *Evidence Act* provides as follows;

    78. Photographic evidence—admissibility of certificate.

        (1) In criminal proceedings a certificate in the form in the First Schedule to this Act, given under the hand of an officer appointed by order of the Director of Public Prosecutions for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film submitted to

him, shall be admissible, together with any photographic prints, photographic enlargements and any other annex referred to therein, and shall be evidence of all facts stated therein.

(2) The court may presume that the signature to any such certificate is genuine.

(3) When a certificate is received in evidence under this section the court may, if it thinks fit, summon and examine the person who gave it.

33. Section 106 B of the said Act provides that;

"(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.

(2) The conditions mentioned in subsection (1), in respect of a computer output, are the following—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub section (2) was regularly performed by computers, whether—

(a) by combination of computers operating in succession over that period; or

(b) by different computers operating in succession over that period; or

(c) in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, then all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer and references in this sections to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any matters to which conditions mentioned in subsection (2) relate; and (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it."

34. From the above, any form of electronic evidence, for obvious reasons ought only to be produced once the person producing the same has complied with the said provision.

35. From the lower court record, the Investigating Officer (PW5) testified that he extracted the test messages exchanged between the Appellant and the Complainant and the Appellant and the Complainant's mother. However, the officer did not extract the requisite certificate. Indeed none was on the court record.

36. It follows that the said exhibit was inadmissible and should not have been on the court record.

37. The import of Section 106 B of the *Evidence Act* was discussed by the Court of Appeal in County Assembly of Kisumu & 2 others Vs Kisumu County Assembly Service Board & 6 Others [2015] eKLR where it observed that:

> " Section 106B of the *Evidence Act* states that electronic evidence of a computer recording or output is admissible in evidence as an original document "if the conditions mentioned in this section are satisfied in relation to the information and computer."
>
> In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B (2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced."

38. Similarly, in John Lokitare Lodinyo Vs I.E.B.C and 2 Others [2018] eKLR the Court of Appeal in reiterating its above decision stated that:

> " Essentially, the sections provide that electronic evidence which is printed out shall be treated like documentary evidence and will be admissible without production of the computer used to generate the information. The appellant claimed that his technical team downloaded the forms and had them printed. He admitted that the forms were from the IEBC public portal. Ordinarily, this would have meant accessing the IEBC portal, which one could only do if they had access to the internet, proceeding to log onto the IEBC portal page, clicking on the Forms 35A uploaded on Kacheliba Constituency, downloading the Forms 35A onto the computer's hard disk and finally printing the documents via a printer connected to the computer... It is at this juncture that the provisions of Section 106B of the *Evidence Act* come into play as the section sets out the conditions to be fulfilled to have this evidence admissible since evidence shall only be admissible if a certificate is presented identifying the electronic record and a description of the manner in which the electronic evidence was produced, together with any particulars of any device involved in the production of that document, which the appellant did not do."

39. Having stated the above, I have considered the judgment of the Trial Magistrate. It is clear that she did not seek to rely on the contents of the data extracted from the phones. Therefore, no prejudice was caused to the Appellant.

40. Even if I was to find that the Trial Court wrongly relied on the evidence and expunged it, I would still have to look at the remaining evidence to determine if the prosecution had proven its case to the requisite standard. I will deal with that later.

41. As regards alleged material contradictions, I am of the view that the same did not constitute anything major. PW3's reference to February 2021 and not the specific date does not water down his evidence. The fact is that when he spotted the Appellant and the Complainant kissing, he alerted PW2. PW2 confirmed this in her evidence.

42. As regards the exact position that the Appellant and Complainant were, the fact is that PW3 saw the Appellant as he was leaving the bathroom. My view is that the Appellant is trying to split hairs in this issue. The same applies to the manner in which PW2 peeped and saw the Appellant and the Complainant blowing kisses at each other when she left the two of them in the sitting room.

43. Not every contradiction will render evidence adduced unbelievable. There are minor discrepancies that can be attributed to how each individual perceives a fact. It is thus not expected that witnesses would give identical testimonies. This point was reiterated in the case of *Joseph Maina Mwangi vs Republic, CA NO. 73 of 1992* where the stated;

> " In any trial there are bound to be discrepancies. An appellate court in considering those discrepancies must be guided by the working of section 382 of the Criminal Procedure Code, viz whether such discrepancies are so fundamental as to cause prejudice to the appellant or they are inconsequential to the conviction and sentence ..."

44. I find that the contradictions pointed out were minor and do not really affect the evidence in totality.

45. As regards the Appellant's defence, it is very clear that the Trial Magistrate dully considered the same. The trial court stated as follows;

> " The court having considered the testimony of the complainant which is corroborated by the evidence of PW2, PW3 and PW4 vis a vis the defence of the accused and the evidence of her witness and the submission by the defence counsel....."

46. I do not wish to belabour this point and even if I did, as the first Appellate Court, I am enjoined to consider the said defence, which was the allegation of a fight between the Appellant and PW2 over money allegedly owned by the latte for tutoring the Complainant. It is in evidence that the confrontation between the two was not over money, but because of the Appellant's alleged relationship with the Complainant, which PW2 did not approve of. She even had to move to another house, so as to get away from the Appellant, but the Appellant followed the Complainant to the new house.

47. PW2 stated the reasons she reported the case to the police, which was the persistent acts of the Appellant. Therefore, the purported grudge over money, which was never brought out during cross examination of PW2, was an afterthought and the trial magistrate correctly ignored it.

48. So was the evidence against the Appellant sufficient to convict her?

49. I have duly examined the evidence. The complainant was a child as proven by the both certificate produced as an exhibit and the evidence of her mother.

50. On the question of the act that was complained of it was abundantly clear that the Appellant's actions had persisted over time and the reference to the specific date in the charge sheet was just part of the chain of events. Ideally, the charge ought to have referred to diverse dates but even as drawn the charges were well understood by the appellant.

51. The complainant explained how the Appellant had on several occasions held her, kissed her and touched her private parts. The trial court believed her and I don't see any ground to depart from that finding.

52. On the identity of the Appellant, I don't think that this was in dispute. The complainant positively identified her. PW2 narrated how she had warned the Appellant to keep off her daughter to no avail. PW3 narrated how he found the Appellant and the complainant kissing near the bathroom. There is cogent evidence as to the identification of the Appellant and find that she was positively identified.

53. Looking at the totality of the evidence, I find that just like the trial court did, the prosecution had proven its case against the Appellant to the requisite standard in law and I uphold the conviction.

54. On sentence, the Appellant argued that the same was harsh. Section 11(1) of the Act provides as follows;

> " Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and liable for conviction to imprisonment for a term of not less than ten years."

55. The trial magistrate sentenced the Appellant to eight (8) years imprisonment.

56. The issue of minimum sentences has been litigated widely in the superior courts. This stems from the decision in Francis Karioko Mwaratetu and Another Vs Republic (2017) eKLR which found that the mandatory death sentence prescribed for murder cases was unconstitutional.

57. Subsequently other superior courts have tendered to apply the ratio decided in Francis Karioko Mwaratetu Vs Republic (Supra) to other offences including robbery with violence, and sexual offices.

58. For instance, in Jared Koita Injiri Vs Republic [2019] eKLR the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by Section 8 (1) (2) of the *Sexual Offences Act*. The Court of Appeal opined that;

> " if the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis."

59. The court further stated:

> " The Appellant was provided an opportunity to mitigate in the trial court where it was stated that he was a first offender. He pleaded for leniency. However, it cannot be overlooked that the appellant committed a heinous crime, and occasioned severe trauma and suffering to a young girl. His actions have demonstrated that around him, young and vulnerable children, like the complainant could be in jeopardy.
>
> Needless to say, pursuant to the Supreme Court decision in Francis Karioko Muruatetu & Another vs Republic (Supra), we would set aside the sentence for life imposed and substitute it therefore with a sentence of 30 years from the date of sentence by the trial court."

60. The Court of Appeal in Dismas Wafula Kilwake Vs Republic (Supra), held that the mandatory minimum sentence under Section 8 of the *Sexual Offences Act* is unconstitutional as it denies the court discretion in sentencing.

61. Also, Odunga J (as he then was), in Philip Mueke Maingi *& 5 others Vs Director of Public Prosecutions & Another (Petition E017 of 2021*) [2022] KEHC 13118 (KLR) held as follows;

> " Taking cue from the decision in Francis Karioko Muruatetu directed that those who were convicted of sexual offences and whose sentences were passed on the basis that the trial Courts had no discretion but to impose the said mandatory minimum sentence are at liberty to petition the High Court for orders of resentencing in appropriate cases."

62. In the case of Fappyton Mutuku Ngui Vs Republic [2019] eKLR the court directed the trial court to rehear the Applicant's sentence on grounds that following the decision in the Muruatetu case several decisions have been made by various courts wherein minimum sentences imposed have been tampered with as a result.

63. The court in Hashon Bundi Gitonga Vs Republic [2020] eKLR held that minimum sentence portends real possibility of a harsher or excessive sentence being imposed on an individual who would after mitigation be entitled to a lesser sentence. That therein lays prejudice.

64. In Samuel Achieng Alego Vs Republic [2018] eKLR the court stated as follows;

> " It is therefore clear that section 8(2) on the face of it prescribes a mandatory sentence as opposed to a maximum one In my view under the current constitutional dispensation, mandatory minimum sentences ought to be looked at in light of Article 27 of *the Constitution* as read with clause 7 of the Transitional and Consequential Provisions which provide as follows: All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

Such sentences, in my view, do not permit the Court to consider the peculiar circumstances of the case in order to arrive at an appropriate sentence informed by those circumstances as the Court is deprived of the discretion to consider whether a lesser punishment would be more appropriate in the circumstances. In those circumstances, it is my view that such provisions do not meet the constitutional dictates..."

65. However, recently, the Supreme Court, in Petition No. E018 of 2023 Republic Vs Joshua Gichuki Mwangi (Respondent) & Initiative for strategic litigation in Africa & 3 others (Amicus curia) (2024) KESC 34 (KLR)delivered on 12th July, 2024 with regard to the mandatory death sentence in offences other than murder, held as follows: -

> "(51) In light of the structural and supervisory interdicts issued, the Court issued the Muruatetu Directions, wherein it, inter alia, pronounced itself on the application of its decision in the Muruatetu Case to other statutes prescribing mandatory or minimum sentences as follows: "
>
> 10. It has been argued in justifying this state of affairs, that, by paragraph 48 of the Judgment in this matter, or indeed the spirit of the Judgment as a whole, the court has outlawed all mandatory and minimum sentence provisions; and that although Muruatetu specifically dealt with the mandatory death sentence in respect of murder, the decision's expansive reasoning can be applied to other offenses that prescribe mandatory or minimum sentences. Far from it. In that paragraph, we stated categorically that:
>
> "[48] Section 204 of the Penal Code deprives the court of the use of judicial discretion in a matter of life and death. Such law can only be SC Petition No. E018 of 2023 26 regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under article 25 of *the Constitution*; an absolute right".
>
> Reading this paragraph and the Judgment as a whole, at no point is reference made to any provision of any other statute. The reference throughout the Judgment is only made to section 204 of the Penal Code and it is the mandatory nature of death sentence under that section that was said to deprive the "courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases."

66. The ratio decidendi in the decision was summarized as follows:

> "Consequently, we find that section 204 of the Penal Code is inconsistent with *the Constitution* and invalid to the extent that it provides for the mandatory death sentence for

murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment".

We therefore reiterate that, this court's decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the *Sexual Offences Act* or any other statute." .....

It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with *the Constitution*. It bears restating that it was a decision involving the two petitioners who approached the court for specific reliefs. The ultimate determination was confined to the issues presented by the petitioners, and as framed by the court.

To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases." [Emphasis ours] ....."

67. In light of the above, it is clear that the Supreme Court has ruled out the application of the principles in both Muruatetu 1 and Muruatetu 2 to any other offences other than murder.

68. What the court made clear is that Muruatetu cannot apply to any other offence other than murder and that once a statute prescribes a minimum sentence, then the court has no leeway to make out anything less from that minimum sentence.

69. It then follows that the sentence of eight (8) years was below the statutory minimum of ten (10) years.

70. Therefore, I set aside the trial's court sentence and substitute with a sentence of ten (10) years imprisonment.

71. From the court record, the Appellant was out on bond until her conviction and sentence. Therefore, considering the provisions of Section 333(2) of the CPC, the court directs that her sentence shall commence from 13th June, 2023, when she was sentenced by the trial court.

72. Right of appeal is explained.

**H.M. NYAGA**

**JUDGE**

**DATED, SIGNED & DELIVERED IN OPEN COURT AT MERU THIS 5TH DAY OF DECEMBER, 2024.**

**H.M. NYAGA**

**JUDGE**

In the presence of: