



**Simiyu v Republic (Criminal Appeal 75 of 2023)  
[2024] KEHC 16133 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16133 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL APPEAL 75 OF 2023  
REA OUGO, J  
DECEMBER 6, 2024**

**BETWEEN**

**WYCLIFFE MPESA SIMIYU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal on sentence from the decision of M. Munyekenye  
SPM Webuye Courts in SO case No. 37 of 2019)*

**JUDGMENT**

1. Wycliffe Mpesa Simiyu the appellant herein was convicted of the offence of defilement contrary to section 8(1) as read with section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006. He was convicted and sentenced to serve 10 years imprisonment.
2. The appeal is only on sentence. The appeal was canvassed by way of written submissions. I have read the said submissions. In his written submissions the appellant submits that the sentence of 10 years imprisonment was harsh and excessive. He seeks that the sentence be reduced on humanitarian grounds and be placed on probation. The rest of his submission is his mitigation about his life and family and his training in prison to enhance himself.
3. The appeal was opposed. The respondent through Miss Matere submitted that the facts presented before the trial court proved their case beyond reasonable doubt. Under the [Sexual Offences Act](#), section 8(3) provides for a sentence of 20 years imprisonment, and the trial court meted a sentence of ten (10) years which sentence was the minimum. Reliance was made on two cases Miscellaneous Criminal Application No. E014 of 2021- Rotike vs Republic and the case of Bernard Kimani Gacheru vs. Republic [2002]eKLR.



4. I have considered the said submissions. It was held in the Bernard Kimani Gacheru vs R ( supra) that it is now well-settled law that a sentence is a matter that rests in the discretion of the trial court and that the sentence must depend on the facts of each case.
5. I agree with the respondent that the appeal has not been brought on any material fact that was overlooked by the trial court nor did the trial court act on any wrong principles. Considering the facts, the appellant defiled a child of 15 years twice. The victim was a minor. She underwent great trauma. What the appellant did was not only degrading but inhuman to a minor. In the circumstances, I find that the sentence was not harsh nor excessive. I find no merit in the appeal and it is dismissed. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 6<sup>TH</sup> DAY OF DECEMBER 2024.**

**R.OUGO**

**JUDGE**

In presence:

Wycliffe Mpesa Simiyu/ Appellant -Present

Ms Minishi - ODDP

Wilkister - C/A

