



REPUBLIC OF KENYA



KENYA LAW
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**Oguta v Republic (Criminal Appeal E005 of 2023)
[2025] KEHC 13246 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E005 OF 2023
WA OKWANY, J
SEPTEMBER 18, 2025**

BETWEEN

JOSEPH OGUTA OGUTA ALIAS JARED OGUTA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal against the Sentence at the Principal Magistrate's
Court in Keroka, CMCCR (SO) E005 of 2022 delivered by Hon.
B.M. Kintai, Principal Magistrate on 26th October 2022)*

JUDGMENT

Background

1. The Appellant, Joseph Oguta Oguta alias Jared Oguta, was charged before the Principal Magistrate's Court at Keroka with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. The particulars were that on an unknown date in June 2021 at [Particulars Withheld] village, Borabu Sub-County, he intentionally caused his penis to penetrate the vagina of IBO (particulars withheld), a child aged 12 years.
2. The Appellant also faced the alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on an unknown date in June 2021 at [Particulars Withheld] village in Borabu Sub-County within Nyamira County, intentionally touched the vagina of IBO (particulars withheld), a child who was aged 12 years with his penis.
3. The Appellant pleaded not guilty to both charges and after a full trial in which the prosecution called a total of seven (7) witnesses, and the appellant tendered sworn defence without calling any witness, he was convicted of the offence of defilement and sentenced to serve 20 years' imprisonment.



Prosecution Evidence

4. The complainant (PW1), aged 13, testified that while alone at home in May 2021, the appellant, a neighbour, asked for her father, forced her to the ground in the kitchen, removed her clothes, and defiled her. He threatened to kill her with a panga if she told anyone. She later became pregnant, which was confirmed after teachers raised concerns.
5. The complainant's mother, PB (particulars withheld) (PW2) testified that hospital tests confirmed the pregnancy and that the complainant later named the appellant as responsible. Her father, BO (particulars withheld) (PW3) confirmed this, adding that the appellant admitted the act when confronted before fleeing.
6. Godwin Amala (PW4), a government analyst, produced DNA results showing the appellant was the biological father of the child. Lameck Nyariba (PW5), a clinical officer, confirmed the pregnancy and produced medical records and a P3 form. No. 24xxx P.C. Benjamin Musioni (PW6), a police officer, testified that he arrested the appellant, while No. 24xxx PC Mercy Akinyi (PW7), the investigating officer, confirmed the complainant's statement, produced her birth certificate and a school letter proving her age, and completed investigations.

Defence Evidence

7. The appellant denied the offence and raised an alibi, claiming he was in Nyamache throughout June 2021, working as a farmer and carpenter. He said he only once met the complainant in March 2021 when he asked her for water. He alleged he was forced into DNA testing and that the P3 form did not show defilement. He claimed the case was fabricated.
8. Aggrieved, by the sentence, the Appellant lodged the present appeal raising 17 grounds which, when distilled, mainly challenge the severity of sentence, he urges the court to consider the joint parental responsibility agreement entered between him and the victim's parents, and seeks a non-custodial sentence on the basis that he is the sole breadwinner.

Issues for Determination

9. I have carefully considered the record of appeal and the parties' respective submissions. I find that the following issues arise for my determination: -
 - a. Whether the conviction of the Appellant was based on sufficient evidence.
 - b. Whether the sentence of 20 years' imprisonment was harsh and excessive in the circumstances.
 - c. Whether the parental responsibility agreement entered between the parties has any legal effect on the conviction and sentence

Analysis

Conviction

10. The Appellant did not challenge the trial court's findings on conviction, however, as the first appellate court, I am still duty-bound to re-evaluate the evidence afresh and draw my own conclusions while bearing in mind that I did not observe the witnesses' demeanour. (See *Okeno vs. Republic* [1972] EA 32 and *Kariuki Karanja vs. Republic* (1986) KLR 190).



11. I find that the complainant (PW1), then aged 13 years, gave clear, consistent, compelling and detailed account of the defilement. Her evidence was corroborated by the testimonies of PW2 and PW3 (her parents), who confirmed the pregnancy and that the victim named the Appellant as her assailant.
12. PW4, the Government Analyst, produced a DNA analysis report which conclusively established that the Appellant was the biological father of the minor's child while PW5 (Clinical Officer), confirmed the pregnancy and filled the P3 Form. Needless to say, the minority age of the victim was not contested.
13. I find that the appellant's denial and alibi defence were displaced by the overwhelming scientific DNA evidence and the consistent testimony of the complainant. I therefore find that the trial court properly found that the ingredients of defilement under Section 8(1) were proved beyond reasonable doubt: penetration, age of the victim, and identity of the perpetrator. (See *Kennedy Odhiambo vs. Republic* [2015] eKLR).
14. I find no reason to interfere with the conviction.

Sentence

15. The Appellant was sentenced to 20 years' imprisonment under Section 8(3) of the *Sexual Offences Act*, which prescribes a minimum of 20 years for defilement of a child aged between 12 and 15 years.
16. It is trite that sentencing is discretionary, and that an appellate court will only interfere with the sentence passed by the trial court if the sentence is illegal, based on wrong principles, or manifestly excessive. In *S. vs. Nchunu & Another* (AR 24/11) [2012] ZAKZPHC6, the Kwa Zulu Natal High Court stated: -

“It is trite law that the issue of sentencing is one which vests a discretion in the trial court. The trial court considers what a fair and appropriate sentence should be.”
17. In *Wagude v. R* (1983) KLR 569 it was held thus: –

“The Court may interfere with the sentence only if it shown that it was manifestly excessive. In this instance two years' Imprisonment for stealing by a person employed in the public service was not manifestly excessive.”
18. In this case, I note that the trial court applied the statutory minimum sentence. The Court of Appeal has held that mandatory minimum sentences under the *Sexual Offences Act* are not unconstitutional per se (see *Christopher Ochieng vs. R* [2013] eKLR).
19. I note that the offence in question is grave as it involved a 13-year-old child who became pregnant as a result of the Appellant's reckless and heinous acts thus justifying the deterrent custodial sentence imposed by the trial court. It is my finding that the Appellant's plea for a non-custodial sentence on account of being a breadwinner for his family cannot override the victim's rights to protection and justice. Indeed, this court finds it ironical that the Appellant, who is himself a family man with young children, had no qualms about defiling and impregnating another child.

Effect of the Parental Responsibility Agreement

20. The Appellant relied on a joint parental responsibility agreement, signed with the victim's parents, as his basis for seeking the leniency of this court. Courts have taken the position that such agreements cannot compromise or extinguish criminal liability. Defilement is an offence against the State and cannot be settled privately. I find guidance in the decision in *Republic vs. Mohamed Abdow*



Mohamed [2013] eKLR, where the court held that sexual offences cannot be withdrawn on account of reconciliation. It is therefore my finding that the said agreement has no effect whatsoever on the conviction or sentence.

21. My above finding notwithstanding and considering the undisputed fact that an innocent child was born as a result of the Appellant's reckless and callous actions, this court cannot simply ignore the plight and welfare of the said child in confirming the sentence passed by the trial court. The unique circumstances of this case calls for this court to go out of his way and call for the Probation Officer's status/pre-sentence report to shed more light on the current circumstances of the victim and the child before it can make its final orders.
22. Consequently, I direct the Probation Officer to prepare and file the said report before the next mention date.
23. Mention on 6th October 2025 for further orders on sentence.
24. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 18TH DAY OF SEPTEMBER 2025.

W. A. OKWANY

JUDGE

