



REPUBLIC OF KENYA



**Duba v Republic (Criminal Appeal E026 of 2025)
[2025] KEHC 15305 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL APPEAL E026 OF 2025
FR OLEL, J
OCTOBER 24, 2025**

BETWEEN

GUYO KOSE DUBA APPELLANT

AND

REPUBLIC RESPONDENT

***(BEING AN APPEAL ARISING FROM THE CONVICTION AND SENTENCE OF HON
A.K AROME (PRINCIPAL MAGISTRATE), IN MARSABIT PRINCIPAL MAGISTRATE
COURT CRIMINAL CASE (SOA) NO E 001 OF 2024, DELIVERED ON 27th MARCH 2024)***

JUDGMENT

A. Introduction

1. The Appellant herein was charge with the offence of attempted defilement contrary to Section 9(1), (2) of the [Sexual offences Act](#) No 3 of 2006. The particulars were that on the 7th day of February 2024 at [Particulars Withheld] in Marsabit Central Sub location within Marsabit County he intentionally attempted to cause his penis to penetrate the vagina of N.A.G a child aged 7 years.
2. On count II, the appellant was charged with the offence of committing and indecent Act with a child contrary to Section 11(2) of the sexual offence Act. The particulars were that on the 7th day of February 2024 at [Particulars Withheld] in Marsabit central Sub county within Marsabit County intentionally touched the vagina of N.A.G a child aged 7 years.
3. The Appellant were arraigned before court on 12.02.2025 and pleaded not guilty to the charge he faced. The prosecution called five (5) witnesses and upon the close of their case, the Appellant was placed on his defence and gave sworn evidence and called his mother as his other witness.



4. The trial court did consider the evidence adduced and convicted the appellant on the offence of attempted defilement. After mitigation he was sentenced to serve an imprisonment term of five (5) years.

B. The Appeal

5. Being dissatisfied with the said judgment, the Appellant did file this Appeal challenging both conviction and sentence, but when this Appeal came up for hearing, he voluntarily abandoned his Appeal against his conviction but urged this court to relook at the sentence passed. He stated that he had been in prison for one year and four months and prayed for a more lenient sentence.
6. The counsel for ODPP in response stated that the sentence passed was not excessive and that there were no grounds to review the same, unless based on Section 333(2) of the Criminal Procedure Code.

C. Determination

7. Sentencing is determined at the discretion of the trial court after considering the facts of the case, mitigating circumstances, and the penalty provided for under the law. The Appellate court can only interfere where it is shown that the same is grossly erroneous, there is no compliance with the provisions of the law, the finding of fact is not supported by the evidence on record, and where material evidence of the parties is not considered. See Republic Vs Stephen Lesinko (2018) eKLR.
8. The Court of Appeal in the case of Benard Kimani Gacheru Vs Republic (2002) eKLR stated;

“It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter which rests in the discretion of the trial court. Similarly, sentencing depends on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless the sentence is manifestly high/excessive in the circumstances of the case or that the trial court overlooked some mutual factors or took into account some wrong material or cited upon a wrong principle. Even if the Appellate court feels that the sentence is heavy and the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the decision of the trial court on sentence unless any one of the matters stated i.e. shown to exist.
9. The judiciary has also set out guidelines on sentencing, which outline the purpose of sentencing at paragraph 4.1, which states as follows;

“Sentences are imposed to meet the following objectives:

 - a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: To deter the offender from committing a similar offence subsequently, as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: To enable the offender to reform from the criminal disposition and become a law-abiding person.
 - d. Restorative justice; To address the needs arising from the criminal conduct, such as loss and damage. Criminal conduct ordinarily occasions victims’, communities’, and offenders’ needs and justice demands are met. Further, to



promote a sense of responsibility through the offender's contribution towards meeting the victim's needs.

- e. Community protection: To protect the community by incapacitating the offender
- f. Denunciation. To communicate the community's condemnation of the criminal conduct

10. The offences the Appellants were charged with attract an imprisonment term of not less than ten (10) years. The appellant has not shown that the said sentence is manifestly high/excessive in the circumstances of the case, or that the trial court overlooked some mutual factors, or took into account some wrong material, or cited upon a wrong principle other than not factoring in the two months he was in remand during trial

D. Disposition.

- 11. The Appeal against his sentence thus fails, but the same shall run from 08.02.2024, when he was arrested.
- 12. Right of Appeal 14 days.
- 13. It is so ordered

JUDGMENT READ, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 24TH DAY OF OCTOBER 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THE 24TH DAY OF OCTOBER 2025.

In the presence of;

Present in court Appellant

Mr. OtienoFor O.D.P.P

Mr. JarsoCourt Assistant

