Onyieni v Republic (Criminal Appeal E126 of 2024)
[2025] KEHC 16813 (KLR) (13 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16813 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CRIMINAL APPEAL E126 OF 2024

DKN MAGARE, J

NOVEMBER 13, 2025

BETWEEN

JOHN MAUTI ONYIENI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the trial court, Hon. V.M. Moguche (RM) in Etago PMCSO No. E025 of 2024.

2. The Appellant was charged with defilement contrary to Section 8(1) & (2) of the *Sexual Offences Act* No. 3 of 2006. There was also an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*, 2006.

3. The particulars of the offence were that on 14.7.2024 at Nyabera sub-location within Etago Sub-county of Kisii County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of LBA, a child aged 8 years.

4. The Appellant was arraigned and he denied the charges. A plea of not guilty was consequently recorded. The trial court considered the case and rendered judgment on 12.11.2024. The court found the Appellant guilty and convicted him of the offence of defilement. The Appellant was also sentenced to 50 years imprisonment.

5. The Appellant was arraigned in court and denied the charges, whereupon a plea of not guilty was entered. The trial court heard the matter and delivered its judgment on 12/11/2024. It found the Appellant guilty and convicted him of the offence of defilement. He was thereafter sentenced to 50 years' imprisonment. The Appellant, aggrieved, lodged this appeal. The Petition of Appeal dated 17.12.2024 raised the following grounds:

a. The learned trial magistrate erred in convicting the Appellant when the charge sheet was defective for being at variance with the evidence.

b. The learned trial magistrate erred in law and fact in failing to find that the prosecution had not proved its case beyond reasonable doubt.

c. The learned trial magistrate erred in law and fact in failing to find that the case of the prosecution was marred with inconsistencies and contradictions.

d. The learned trial magistrate erred in law and fact in giving 50 years imprisonment that was excessive and harsh.

e. The learned trial magistrate erred in fact and law in shifting the burden of proof to the Appellant.

Evidence

6. At trial, PW1, the minor testified that on 14.2.2024 she went to fetch water with Mellen Alice. She took water home and again went to play with Mildred. The Appellant came, held her hand and dragged her to a sugarcane plantation. He undressed all her clothes and removed her panty. He also undressed himself by removing his inner trousers and underwear. He made her to lie down. He then inserted his private parts into her vagina. It was painful and she cried. The Appellant then ran away. She woke up, wore her clothes back, went home and told her sister, Lucy. Lucy then told her mother the next morning. It was her further testimony that the Appellant was her uncle. On cross examination, it was her case that the children she was with did not scream. She had also never played with the Appellant earlier.

7. PW2 was also a minor, LB who was sister to PW1. According to her, she used to sleep with PW1. On the night of 14.7.2024, she heard PW1 cry. On asking why, PW1 said that her private part was itching. She looked at the private part of PW1 and it was bleeding. LB told their mother the next morning.

8. PW3 was Everline Moragwa. It was her case that she was the mother of PW1. She was 8 years old. When she woke up on 15.7.2024, she woke up in the morning. She went to wake up her children and PW2 told her that PW1 was bleeding from her vagina. She asked PW1 and PW1 said the Appellant had defiled her. On cross examination it was her case that the Appellant found them when they had come from the hospital with PW1 and he was drunk.

9. PW4 was Emily John, the Clinical Officer. According to her, the minor was 8 years. She examined the minor on 15.2.2024 and noted blood in the vagina. There was laceration of the labia and blood clot around the labia majora and vaginal walls. There were no purse cells or spermatozoa seen. There was presence of blood cells and she was given antibiotics. The witness produced the P3 Form and PRC.

10. PW5 was No. 125253 Cynthia Mueni of Etago Police Station. She testified that she was the investigating officer. She escorted PW1 to hospital. Investigations linked the Appellant and he was arrested by PC Mosomi. On cross examination, it was her case that she did not visit the scene of the crime.

11. The Appellant also testified on oath as DW1. He testified that it was not true that he defiled PW1. He prayed for forgiveness for the offence for which he was merely framed.

Submissions

12. The Appellant filed submissions. They are dated 12.8.2025. He submitted that the evidence of PW1, PW2 and PW3 was contradictory and unbelievable just as it was not credible. Overall, it was his submission that there is no way the Respondent could have been held to have proved the case against the Appellant beyond reasonable doubt when the evidence in totality was hearsay. He did not cite authorities.

13. The Respondent also submitted via the submissions dated 21.8.2025 that all the ingredients of the offence being defilement, penetration, age and identity were proved beyond reasonable doubt. Reliance was placed on Mwareng, Dominic Kibet v Republic Criminal Appeal 155 of 2011; [2013] KEHC 1353 (KLR) based on which it was submitted that the court correctly relied on the evidence of the complainant and the medical evidence to convict.

14. On sentence, it was submitted that the sentence was proper and should be upheld, and that the Appellant was warned the sentence could enhanced before filing of the appeal. In this respect the prosecution was plainly wrong. If a sentence is unlawful, the court is entitled to return a lawful sentence whether or not an accused person is warned. On the other hand, where a sentence is lawful but lenient, there is an obligation to inform in advance an appellant or applicant of the consequence of a positive finding on conviction.

Analysis

15. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in Pandya -vs- Republic [1957] EA 336 as follows:-

> On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

16. In the case of Okeno v Republic [1972] EA 32 at 36 the East Africa Court of Appeal stated on the duty of the Court on a first appeal 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 v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 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 findings and conclusions; 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 v. Sunday Post, [1958] E. A. 424.

17. The issue in this case is whether the prosecution proved its case to the required standards. Most oft quoted English decision by Viscount Sankey L.C in the case of H.L.(E) Woolmington vs. DPP [1935] A.C 462 pp 481, comes in handy in describing the legal burden of proof in criminal matters, that;

> Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

18. In the case of R vs. Lifchus {1997}3 SCR 320 the Supreme Court of Canada explained the standard of proof as doth:-

> The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt.

19. The legal burden refers to the burden of proof which remains constant throughout the trial. It is the obligation of a party to establish the facts and contentions necessary to support its case, in this case the prosecutor. According to Halsbury's Laws of England, 4th Edition, Volume 17, paras 13 and 14:

> The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case of with separate issues.

20. The standard of proof required in such cases was addressed by Brennan, J in the United States Supreme Court decision of In re Winship 397 U.S. 358 (1970), at pages 361–364, where he stated that:

> The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatised by the conviction...Moreover use of the reasonable doubt standard is indispensable to command the respect and confidence of the community. It is critical that the moral force of criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned.

21. The Appellant was charged with defilement contrary to Section 8(1) & (2) of the *Sexual Offences Act* No. 3 of 2006. I note this to be in error as PW1 was said to be 11 years old. I reproduce Section 8 (1)-(4) of the *Sexual Offences Act* as follows:

Defilement

(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

22. The court dealing with the first appeal is entitled to consider the evidence in the trial court as a whole as being submitted afresh to be subjected to exhaustive examination to guide the court towards its own decision on the evidence. In Kiilu & Another vs. Republic [2005]1 KLR 174, the Court of Appeal stated as follows:-

1. An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusions.

2. 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 findings and 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.

23. The issue for this court's determination is whether the prosecution proved the offence of defilement as against the Appellant beyond reasonable doubt. There is a supplementary question whether, the sentence is excessive.

24. Proof beyond reasonable doubt does not impose a standard of proof beyond the shadow of a doubt. Where the evidence tendered is so strong as to leave only a remote possibility in favour of the accused person, which can be dismissed with the sentence of course it is possible, but not in the least probable,

then it can be said in law that the case is proved beyond reasonable doubt. It was held by the Court of Appeal in Moses Nato Raphael vs. Republic [2015] eKLR as doth:

> What then amounts to reasonable doubt? This issue was addressed by Lord Denning in Miller v. Ministry of Pensions, [1947] 2 ALL ER 372 where he stated:-
>
> > 'That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.'

25. The parameters that were to be proved in cases like the instant case were settled in the case of George Opondo Olunga vs Republic [2016] eKLR that the ingredients of the offence of defilement are proof of complainant's age, proof of penetration and proof of the identification of the perpetrator. In the case of Said v Republic [2022] KECA 1274 (KLR), the court of appeal [SG Kairu, P. Nyamweya & JW Lessit, JJA] set forth the said elements as follows:

> We start our consideration by reiterating the holding by this court in John Mutua Munyoki v Republic, [2017] eKLR, that under the *Sexual Offences Act*, the main elements of the offence of defilement are as follows:
>
> i. The victim must be a minor, and
>
> ii. There must be penetration of the genital organ and such penetration need not be complete or absolute. Partial penetration will suffice.
>
> In this regard, genital organs are defined in section 2 of the *Sexual Offences Act* to include the whole or part of male or female genital organs and for purposes of the Act, include the anus.

26. At trial, PW1 gave candid evidence. The court conducted a voir dire and satisfied itself that she fully understood the significance of taking an oath. I have no doubt in this regard. Her testimony was explicit and comprehensive concerning the events that transpired. She is a well-articulated girl, and I must commend her. She described the events that led to her ordeal as follows:

> ...on 14.2.2024 I went to fetch water with MA (anonymized]. I took water home and again went to play with Mildred. John came, held my hand and dragged her to a sugarcane plantation. He undressed all my clothes and removed my panty. He also undressed himself by removing his inner trousers and underwear. He made me to lay down. He then inserted his private parts into my vagina. It was painful and I cried. John then ran away. I woke up, wore my clothes back, went home and told my sister, Lucy. Lucy then told my mother the next morning. John was my uncle. The children I was with did not scream. I had never played with the Appellant earlier.

27. The above testimony was corroborated by Lucy and her mother who testified as PW2 and PW3. It was their uncontroverted case that PW1 had blood in her genitalia and was crying in pain. PW4, the medical officer also supported the case by finding that there was blood and laceration to the labia and

vaginal walls and formed the opinion that PW1's vagina was penetrated. The question of penetration was proved beyond reasonable doubt.

28. On the issue of identification, in my close reevaluation, I note that identification was by recognition and was equally not a disputed fact that the Appellant was known to PW1 as her uncle. The Appellant's defence was only that the allegations were not true and that he should be forgiven of the offence he was framed with. He never elaborated the manner in which the charges were trumped up against him and why he could be forgiven about what he genuinely did not do or fail to do.

29. The Appellant lamented about there being inconsistencies in the prosecution witnesses. In Dickson Elia Nsamba Shapwata & Another vs. The Republic, Cr. App. No. 92 of 2007 the Court of Appeal of Tanzania addressed the issue of discrepancies in evidence and concluded as follows:

> In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The Court has to decide whether inconsistencies and contradictions are minor, or whether they go to the root of the matter.

30. I have no doubt that there were no inconsistencies and contradictions in the evidence of PW1, PW2, PW3, PW4 and PW5. All unequivocally pointed to the fact of the defilement of PW1 and the Appellant being at the centre of the crime. There could be trivial discrepancies and contradictions which were not fundamental as to cause prejudice to the Appellant, as human nature is not memory-proof. In Joseph Maina Mwangi vs. Republic CA No. 73 of 1992 (Nairobi) Tunoi, Lakha & Bosire JJA held:

> 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.

31. Therefore, the evidence of PW1, PW2, PW3 and PW4, left no doubt in my mind that the Appellant committed the offence herein. Emphatically, the evidence of PW1 was typically unshaken in cross examination. The Appellant appeared to concede when he testified saying that he should be forgiven.

32. On the aspect of age, age is such a crucial component in sexual offences that it points to the extent of punishment for the offenders. This was also the position of the court in Kaingu Kasomo vs. Republic, Criminal Appeal No. 504 of 2010 (UR), where the Court of Appeal stated as doth:

> Age of the victim of sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim.

33. The age of the minor herein could be proved by documentary evidence such as a birth certificate, baptism card or by oral evidence of the child if sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof. In Mwalengo Chichoro Mwajembe vs Republic, Msa. App. No. 24 of 2015 (UR) the court held:

> "..... the question of proof of age has finally been settled by decisions of this court to the effect that it can be proved by documentary evidence such as a birth certificate, baptism

card or by oral evidence of the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof....

34. Medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim. In Francis Omuroni vs Uganda, CR. A 2/200 it was held that:

> In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may also be proved by a birth certificate, the victim's parents or guardian and by observation and common sense. ....

35. Consequently, age herein was proved by the production of the Birth Certificate. The birth certificate stated that PW1 was born on 23.8.2016 and so was 7 years 11 months and 9 days old. The birth certificate was registered on 12.10.2016 which was proper and credibly analyzed with the surrounding evidence and circumstance. I have no basis to interfere with the finding of the trial court who, based on the birth certificate and the medical report applied the age of 8 years.

36. The court also observed the minor. The minor was not exercised of age. There is no basis for finding that age was not proved. It must be remembered that the only question asked was whether the other children screamed. Not even the victim was given the dignity to answer that question. The court below exercised discretion which was based on fact and evidence. In the case of Ramakant Rai vs. Madan Rai, Cr LJ 2004 SC 36, the Supreme Court of India rendered itself thus on the issue of judicial discretion:

> Judicial discretion is canalized authority not arbitrary eccentricity. Cardozo, with elegant accuracy, has observed:
>
> > The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not a yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains.

37. The court notes that there was no doubt on the perpetrator. There are no co-existing circumstances that point to the innocence of the appellant. Both direct and circumstantial evidence show the appellant as the only perpetrator. For circumstantial evidence to be relied on, it must be inconsistent with the accused's innocence. In the case of Ahamad Abolfathi Mohammed and Another v Republic [2018] eKLR, the court had this to say on circumstantial evidence:

> " However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: - 'It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is

capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial."

38. The evidence in its entirety point irresistibly to the guilt of the Appellant. The court, in a beautifully written judgment, cogently applied the provisions of Section 124 of the *Evidence Act*. The said section provides as follows:

> Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:
>
> > Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

39. The learned resident magistrate dealt with the proviso in Section 124 of the *Evidence Act*. She also noted that the minor identified the appellant as her uncle. The minor was not mistaken. The appeal against conviction is therefore untenable and devoid of merit. It is accordingly dismissed.

40. The Appellant appealed that the sentence was excessive and harsh. He was sentenced to serve 50 years for an offence he ought to have been sentenced to serve life imprisonment. Under Section 8(2) of the *Sexual Offences Act*, the term of imprisonment was life imprisonment for defilement of a child aged 11 years and below.

41. There is no substitute for life imprisonment. In the case of Republic v Manyeso [2025] KESC 16 (KLR), the Supreme Court [PM Mwilu, DCJ & VP, MK Ibrahim, SC Wanjala, N Ndungu & I Lenaola, SCJJ] addressed this issue as follows:

> In the case of Gatirau Peter Munya (supra), we were categorical that precedents set by this court are binding on all other courts in the land. It is also imperative for all courts bound by decisions to rigorously uphold their authority, ensuring the effective functioning of the administration of justice. Without this steadfast and uniform commitment, the legal system risks ambiguity, eroding public trust, and causing disorder in the administration of justice.
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> 59.The binding nature of precedents and the place of certainty in law was also explained by the East Africa Court of Appeal in Dodhia v National & Grindlays Bank Limited & another [1970] EA 195, where it was held that:
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> > " There can be no doubt that the principle of judicial precedent must be strictly adhered to by the High Courts of each of the States and that these courts must regard themselves as bound by the decision of the Court of Appeal on any question of law, just as in the former days the Court of Appeal was bound by a decision of the Privy Council, or in England as the Court of Appeal or the High Courts are bound by the decisions of the House of Lords, and of course, similarly the magistrates courts or any other inferior court in each State are bound on questions of law by the decisions of the Court of Appeal and, subject to these decisions, also to the decisions of the High Court in the particular State."

61. By express provision of *the Constitution* under article 163 (7), requiring courts below to abide by decisions of the Supreme Court, a constitutional duty is imposed on all those courts. Failure to adhere to precedent set by the apex court and indeed superior courts may disrupt the uniformity, consistency and predictability of decisions. In Wanjohi v Kariuki & 2 others (Petition 2A of 2014) [2014] KESC 26 (KLR) Rawal, DCJ in her concurring opinion observed that the principles set by this Honourable Court in the course of its constitutional adjudication are principled and well considered. Therefore, an argument to consider a departure from these principles or to distinguish either restrictively or un-restrictively must be weighed against the most serious inclinations of justice and social utility. As such, any departure from the decisions of this court by a lower court must be based on well-reasoned distinction of the facts.

42. The court went ahead to extensively discuss the question of the mandatory life sentence for sexual offences as follows:

64. Paragraph 11 to 14 of the Muruatetu directions are very clear that the decision in the Muruatetu case did not invalidate mandatory sentences or minimum sentences in the Penal Code, *Sexual Offences Act* or any other statute. Further, that the Muruatetu case cannot be said to be the authority for stating that all provisions of the law prescribing minimum sentences are inconsistent with *the Constitution*. Paragraphs 93 to 97 of the Muruatetu decision are also explicit that it is not for the court to define what constitutes a life sentence. While we appreciated that a life sentence could mean a certain minimum or maximum time to be set by a judicial officer, this court made the following recommendations to the Attorney General to develop legislation on what constitutes a life sentence:

> " 94. We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in Jackson Wangui, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature.
>
> 95. We also acknowledge that in Kenya and internationally, sentencing should not only be used for the purpose of retribution, it is also for the rehabilitation of the prisoner as well as for the protection of civilians who may be harmed by some prisoners. We find the comparative jurisprudence with regard to the indeterminate life sentence is compelling. We find that a life sentence should not necessarily mean the natural life of the prisoner; it could also mean a certain minimum or maximum time to be set by the relevant judicial officer along established parameters of criminal responsibility, retribution, rehabilitation and recidivism.
>
> 96. We therefore recommend that the Attorney General and Parliament commence an enquiry and develop legislation on the definition of

> 'what constitutes a life sentence'; this may include a minimum number of years to be served before a prisoner is considered for parole or remission, or provision for prisoners under specific circumstances to serve whole life sentences. This will be in tandem with the objectives of sentencing.

65. From the above paragraphs of the Muruatetu case any reading of that decision ought to lead to the conclusion that it is upon the Legislature to enact legislation on what constitutes a life sentence and not the courts.

43. Therefore, imposing of 50 years is not life imprisonment. It is not a punishment provided under section 8(2) of the *sexual Offences Act*. I dismiss the claim that the sentence is harsh. However, I find the sentence to be excessive. The effect of the foregoing and on the basis of stare decisis, the sentence of 50 years is substituted with life imprisonment.

44. All things evidence and law considered, I find that this appeal lacks merit and is hereby dismissed, save for the correction of the sentence to read the lawful sentence, that is life imprisonment.

Determination

45. I make the following final orders:-

a. This appeal is devoid of merit and is dismissed both on sentence and on conviction.

b. The sentence of 50 years is unlawful. It is therefore substituted with life imprisonment.

c. Right of appeal 14 days explained.

d. The file is closed.

DELIVERED, DATED and SIGNED AT NYERI ON THIS 13TH DAY OF NOVEMBER, 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Appellant present

Mr. Njeru for the State

SSgt. Maina at Kisii main prison

Court Assistant – Michael