



**Wanjala v Republic (Criminal Appeal E007 of 2023)
[2025] KEHC 16668 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16668 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E007 OF 2023
MS SHARIFF, J
NOVEMBER 14, 2025**

BETWEEN

MOSES WAFULA WANJALA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the sentence in Sexual Offences Case No. E055 of 2021 at the Chief Magistrates Court at Bungoma by Hon. P.N. Gesora-CM delivered on 16th February 2023.)

JUDGMENT

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JUDGMENT

Background

1. The Appellant herein was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* No. 3 of 2006. The particulars being that on diverse dates between 28th January 2021 and 12th February 2021, at around 1.00 a.m. at (particulars withheld) estate, Bungoma South, within Bungoma County, he intentionally and unlawfully caused his penis to penetrate the vagina of M.A.W a child of 15 years.
2. In the alternative the Appellant faced an offence of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act* No.3 of 2006. The particulars being that on diverse between 28th January 2021 and 12th February 2021, at around 1.00 a.m. at (particulars withheld) estate, Bungoma South, within Bungoma County, he intentionally and unlawfully committed an indecent act with a child namely M.A.W, aged 15 years by touching her vagina using his penis.



3. The Appellant pleaded not guilty to the offences. The Respondent called Four (4) witnesses in support of its case and in his defense, the Appellant gave sworn testimony, and did not call any witness.
4. At the close of the Respondent's case, the Appellant was found to have a case to answer and was thus placed on his defence.
5. The trial Court after considering the evidence adduced by both parties found that the Respondent had proved its case against the Appellant beyond reasonable doubt. The Appellant was convicted and sentenced to serve Twenty (20) years in prison.

Appeal

6. Aggrieved by the sentence, the Appellant lodged the instant appeal, vide an undated Petition of Appeal filed in Court on 23rd February 2023, in which he raised the following grounds of appeal:
 - a. That he is a first offender.
 - b. That he did not plead guilty to the charges.
 - c. That the learned trial magistrate erred in law and facts by convicting the Appellant based on contradictions by the Prosecution.
 - d. That the learned trial magistrate erred in law and facts by failing to put into consideration forensic evidence.
 - e. That the learned trial magistrate erred in law and facts by failing to keenly observe circumstantial evidence.
 - f. That the learned trial magistrate erred in law and facts by convicting the Appellant on the weakness of his defence, rejecting his alibi defence
 - g. That more grounds will be adduced at the hearing of the appeal.
7. The Appellant prayed for the appeal to be allowed, his conviction to be quashed and he be set at liberty.
8. Vide Court directions issued on 3rd February 2025, this Honourable directed the parties to canvass the appeal by way of written submissions. Both Parties complied.
9. The Appellant herein proceeded to file undated amended grounds of appeal pursuant to Section 350(2) of the Criminal Procedure Code, wherein he raised the following amended grounds of appeal:
 - a. That the appeal is against sentence only.
 - b. That the Honourable learned trial Magistrate erred in law and facts in imposing mandatory minimum sentence without considering that the current jurisprudence on sentencing is strictly based on the trial Court's discretion.
 - c. That the Honourable trial Magistrate erred in both law and fact to impose minimum mandatory sentence without considering that its imposition implied that the Appellant's mitigating circumstances inter alia relevant factors of consideration in sentence determination were not taken into account.
 - d. That the imposition of mandatory minimum sentence implies that the trial magistrate erred in law and fact when it failed to exercise its discretion in sentencing.
10. The Appellant prays that the appeal succeeds in its totality and the minimum mandatory sentence be substituted with a more lenient sentence.



11. The respondent also filed its submissions dated 19th February 2025 and it supported both the conviction and sentence.

Analysis and determination

12. The duty of a first appellate Court was restated in the case of David Njuguna Wairimu vs. Republic [2010] eKLR where the Court of Appeal cited the case of Okeno v. R [1972] EA. 32 and held thus: -

“The duty of the first appellate court is to analyse the re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellant court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”

13. I have carefully considered the record of appeal and the parties’ respective submissions. I find that the main issue for determination is whether this Court can interfere with the sentence passed by the trial Court.
14. This being an appeal against sentence, the Court in Wanjema v Republic (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. The appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judiciously and not capriciously, then appellate Court should be slow to interfere with that exercise of discretion by the trial court.
15. The Appellant herein was charged under Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#). Section 8(3) of the [Sexual Offences Act](#) provides that: -

“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.”
16. The above notwithstanding, this court took cognizance the fact that there was emerging jurisprudence that the mandatory minimum sentences in defilement cases was unconstitutional and courts have a discretion to depart from the minimum mandatory sentences.
17. Prior to the directions of the Supreme Court in Francis Karioko Muruatetu and Another vs Republic [2017] eKLR on 6th July 2021 that emphasized that the said case was only applicable to murder cases, Courts re-sentenced applicants for different offences, including sexual offences.
18. In the case of defilement matters, the High Court and subordinate Courts were bound by the Court of Appeal decision in the case of Dismas Wafula Kilwake vs Republic [2018] eKLR where it held that Section 8 of the [Sexual Offences Act](#) must be interpreted so as not to take away the discretion of the Court in sentencing offences.



19. With the directions of the Supreme Court which clarified that the case of Francis Karioko Muruatetu and Another vs Republic (Supra) was only applicable to re-sentencing in murder cases only, Courts stopped re-sentencing applicants in sexual offences.
20. However, on 3rd December 2021 while the Supreme Court directions of 6th July 2021 were still in place, in the case of GK v Republic (Criminal Appeal 134 of 2016) [2021] KECA 232 (KLR), the Court of Appeal reiterated that the law was no longer rigid with regard to minimum mandatory sentences and would take into account the peculiar circumstances of each case.
21. On 15th May 2022 which was also after the directions of the Supreme Court, in the case of Maingi & 5 others v Director of Public Prosecutions & another (Petition E017 of 2021) [2022] KEHC 13118 (KLR), Odunga J (as he then was) held that to the extent that the *Sexual Offences Act* prescribed minimum mandatory sentences with no discretion to the trial Court to determine the appropriate sentence to impose, such sentences fell afoul of Article 28 of *the Constitution* of Kenya, 2010. He, however, clarified that it was not unconstitutional to mete out the mandatory sentence if the circumstances of the case warranted such a sentence.
22. In the case of Republic –v- Joshua Gichuki Mwangi Supreme Court of Kenya Petition No. E018/2023 affirmed the legality of mandatory sentences under the *Sexual Offences Act*. The Supreme Court held that the Sentence of life imprisonment imposed by the learned trial magistrate was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act* remains valid. This decision binds this Court by dint of the doctrine of ‘stare decisis’ or precedent. Article 163 (7) of *the Constitution* of Kenya 2010 codifies this doctrine by providing that all decisions of the Supreme Court are binding upon the other Courts below it.
23. In Kindero & 5 Others –v- Waititu & Others Supreme Court Petition No 18/2014 (consolidated with Petition No. 20/2014)- it was stated:-

“The principle of Stare decisis in Kenya unlike other jurisdictions is a constitutional requirement aimed at enhancing certainty and predictability in the legal system.”
24. The Supreme Court has settled the Law on the sentences under Section 8 of the *Sexual Offences Act* and this Court cannot depart from it. The sentence meted to the Appellant was the statutory prescribed minimum sentence given the the complainant was 15 years old at all material times and I find no fault in the manner that the trial court exercised it’s discretion in sentencing.
25. On the balance I do find that the appeal herein on the sentence is devoid of merit and I accordingly dismiss it. The sentence of the trial court is hereby upheld.
26. In the result, this appeal against sentence lacks merit and the same is dismissed.

Orders accordingly.

Dated and delivered at Bungoma this 14th day of November 2025.

M.S.Shariff

Judge

In the presence of:

Appellant

Ms Kibet for the Respondent

Peter Machoni - Court Assistant



Bungoma HCCRA NO. E007 OF 2023- Judgment M.S. Shariff J

