Mwiti v Republic (Criminal Appeal E022 of 2024)
[2025] KEHC 17895 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17895 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

CRIMINAL APPEAL E022 OF 2024

RL KORIR, J

NOVEMBER 27, 2025

BETWEEN

PATRICK MWITI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal from the Conviction and sentence at Marimanti Principal Magistrate's Court Criminal S.O No. 9 of 2020 by Hon. S.M. Nyaga- S.R.M delivered on 7th October, 2020)

JUDGMENT

1. Patrick Mwiti (Appellant) was charged with the offence of defilement contrary to Section 8 (1) (3) of the *Sexual offences Act* No. 3 of 2006. The particulars of the offence were that on 21st February 2020 at [Particulars withheld] village in Nkarini Sub-location, Tharaka South Subcounty within Tharaka Nithi County, intentionally caused his penis to penetrate the vagina of C.K a child aged 13 years.

2. In the alternative, he faced the charge of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the offence are that on 21st February 2020 at [Particulars withheld] village in Nkarini Sub-location, Tharaka South Sub-County within Tharaka Nithi County, intentionally touched the vagina of C.K a child aged 13 years with his penis.

3. The charges were read to the accused on 2nd March 2020 but plea was deferred to 4th March 2020 at the request of the Prosecution who informed the court that there was a related matter which they wished to consider for consolidation.

4. On 4th March 2020, the charges were read to the accused who pleaded not guilty and a plea of not guilty was entered.

5. On 23rd September 2020, the Accused requested that the charges be read over again. The charges were read to the Accused in Kitharaka language to which he pleaded guilty on the main count and a guilty

plea was entered. The accused was cautioned on sentence but he insisted he was ready for whatever sentence and persisted in his guilty plea.

6. The Facts were then read by the Prosecutor as follows:-

> " That on 21st February 2023 at [Particulars withheld] village, the victim was having supper with her siblings. At around 10:pm, a man known to her as MW who is the accused known as Patrick Mwiti came to their home and broke the door and entered their house. He grabbed the victim and dragged her outside the house while threatening her together with her siblings that if they were to raise alarm, he would kill them. He wrestled her to the ground outside their house and had sex with her after removing her clothes. The complainant struggled but the accused beat her up. She got injured on her face, right arm and head. The accused took the victim into the farm and penetrated her the second time. He then released her and threatened her if she was to mention the matter to her mother, he would kill her. The victim however reported to her mother Charity Kawira who called the neighbours and was helped to report at Chiakariga Police Post. The victim then was examined and treated at St. Orsola Hospital and a P3 form was filled. Investigations ensued and the accused was charged accordingly. The prosecution produced a bundle of treatment notes and a copy of birth certificate as PEX 1 and PEX 2 respectively."

7. Once the Facts were read, the accused confirmed that the same were correct. He was convicted on the main count on his own plea of guilty.

8. On mitigation, he told the court that he was a child of a single father who was poor. That he was a young man who was influenced by the evil one (satan) to commit the offence. He prayed for a non-custodial sentence stating that he would never repeat such an offence in his life.

9. On 7th October 2020, when the matter came for sentencing the trial court rendered itself as follows:-

> " I have re-considered mitigation and now the pre-sentencing report. I note that the accused is a repeat offender. I do not see him remorseful in any way since he has been painted a sexual beast thirsting for women by force. I have no words to describe what the victim herein felt after she was brutally attacked and defiled by the accused outside their home at night and in the presence of her siblings. The young queen lost her virginity through the most brutal way one can imagine. It's simply a chilling experience. I am aware of the minimum sentence that I feel is not sufficient since the accused has gone through the same path but has not changed.
>
> Instead, he is feared in the village for his unlawful having forcible sex with locals as they go to fetch water. This is a habit that he seems not able to personally reconcile with.
>
> In effect I impose a life sentence imprisonment to at least enable the community live in peace and accused get a benefit of at least changing his ways. I also order the ODPP to pursue the rape matter pending at Chiakariga Police Post and report back to court on or before the close of business this month."

10. Aggrieved with the trial court's decision rendered on 7th October 2020, the Appellant lodged his appeal on seven grounds which were to the effect that crucial witnesses were not called; that there was no medical evidence linking him to the offence; that the Prosecution case was not proved beyond reasonable doubt; that the trial court rejected his defence without reason and that he required to be supplied with the trial record.

11. Subsequently, the Appellant filed Amended grounds of Appeal reproduced verbatim as follows:-

i. That the trial learned magistrate erred in both law and facts by failing to note that the plea of guilty taken by the Appellant was equivocal.

ii. That the learned trial magistrate erred in both matters of law and fact by failing to note that the facts adduced by the prosecutor did not disclose an offence, since the charge sheet was in variance with the facts adduced before court.

iii. That the learned trial magistrate erred in both law and fact by failing to note that he did not pass the sentence to the Appellant. The court records were silent whether the sentence was passed or not. The committal warrant in prison shows that the Appellant is serving a life sentence.

iv. That the learned trial magistrate erred in both law and fact by proposing the sentence of life imprisonment without noting that the age of the complainant was 13 years, thus the sentence of life imprisonment is harsh and excessive.

v. That the learned trial magistrate was so biased by putting his words in the court records without noting that the same wee not fact adduced before court.

12. Parties canvassed the Appeal through written submissions as directed by the court.

The Appellant's Submissions

13. The Appellant submitted that the trial magistrate erred in both matters of law and fact by failing to note that facts adduced by the prosecutor did not disclose an offence, since the charge sheet was in variance with the facts adduced before the court and the plea of guilty taken by the Appellant was equivocal. The Appellant urged that the facts read by the Prosecution to the Accused did not indicate the victim's age which was contained in the charge sheet. He relied on the case of Adan v Republic, 1973 EA 445 and Muiruri v Republic [2003] KLR.

14. On sentence, the Appellant submitted that the trial court erred in both law and fact by sentencing him to life imprisonment which was harsh and excessive as the complainant was 13 years old.

15. The Appellant further faulted the trial court for being biased. That the trial court recorded what was not adduced before court. That in particular during sentencing, the court indicated that the appellant was a repeat offender, contrary to the Prosecution submission that they had no prior records. The Appellant relied on the authority of Obedi Kilonzo Kevevo v Republic Cr. Appeal No. 77 of 2015.

The Respondent's submissions

16. The Respondent identified and submitted on the two issues for determination being, whether the plea was unequivocal, and; whether the sentence was harsh and excessive.

17. With respect to plea, the Respondent submitted that the trial court followed the procedure for plea taking in the subordinate court as laid down under Section 207 (1) (2) and (3) of the Criminal Procedure Code and as explained in the case of Adan v R [1973] EA. They submitted that the plea was taken in a language that the Appellant understood. That he confirmed the facts read to him as correct and the court proceeded to record the admission in the words used by the Appellant and then formally entered a plea of guilty. That the fact that the Appellant mitigated and pleaded for leniency means that he understood the charge he was facing.

18. On sentence, the Respondent submitted that the trial court placed reliance on emerging jurisprudence where Superior courts have exercised discretion in sentencing in sexual offences. They submitted that the trial court recorded the Appellant's mitigation and considered that the Victim Impact Assessment

as well as the Pre-Sentence Report and made a finding to depart from the minimum mandatory sentence prescribed under Section 8 (3) of the *Sexual Offences Act*.

Analysis and Determination.

19. I have considered the grounds of appeal, the trial record and the submissions by the parties. Two issues arise for my determination as follows:-

    i. Whether the plea was equivocal.

    ii. Whether the trial court pronounced sentence and whether he sentence was harsh and excessive.

Whether the plea was unequivocal

20. It is settled that a plea of guilty must be unequivocal, and that the facts read must disclose the essential ingredients of the offence charged. Thus, for a plea to be unequivocal, it must accord to the steps laid down in Section 207 of the Criminal Procedure Code as explained in Adan vs. Republic [1973] EA 446 by Spry, V.P. as follows:-

> " When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must of course be recorded."

21. In the present case, the charges were read to the Appellant on 4th March 2020. He pleaded not guilty. On, 23rd September, 2020, at his request, the charges were again read to him this time in the Kitharaka language which he understood and he pleaded guilty to the main count. A plea of guilty was entered. The court cautioned him on the possible sentence, he affirmed that he was ready to receive whatever sentence, and the facts were read to him. He confirmed that they were correct, and he was convicted on his own his plea of guilty.

22. The Appellant contends that the facts read did not state the victim's age whereas the charge sheet did, and that this discrepancy rendered the plea equivocal. He relies on Muiruri v R and Adan v Republic (2003) KLR 552 (supra.) The Respondent on the other hand has urged that the plea was not only unequivocal but that the offence was disclosed in both the charge and the facts.

23. The Appellant relied on a Court of Appeal decision in Obedi Kilonzo Kevovo case (supra) which held that failure by the Prosecution to include the age of the victim in the statement of facts read to the Appellant rendered the plea equivocal and occasioned a miscarriage of justice.

24. The Authority above is binding on this court. However, it is distinguishable in the facts of this case. In this case the charge contained the age of the victim as 13 years. In reading the facts of the case,

the Prosecutor referred to, and in fact produced the Birth Certificate of the complainant [Exhibit 3] which indicated the date of birth as 17th August 2006. Other than the Birth certificate [Exhibit 3], the Prosecutor also produced the P3 [Exhibit1] and Treatment Notes [Exhibit 2.]

25. Asked to respond on the facts, the Appellant answered "The facts are correct' leading to a confirmation of the guilty plea and conviction by the trial court.

26. Going by the date of birth in the certificate, the complainant was 13 years old. It is not true therefore that the facts omitted the age of the complainant making the plea equivocal. It is my finding that the Appellant's plea of guilty was unequivocal. He perfectly understood the charge, and admitted the facts which included the exhibited age of the complainant.

27. It is my further finding that the Appellant suffered no prejudice by pleading guilty and admitting the facts. By so doing, he merely accepted responsibility for the heinous offence he had committed.

28. In a plea of guilty, the court ordinarily does not go into evaluation of evidence. It accepts the facts as proved by the accused's admission. However, the court must be sure that the facts read indeed do contain the essential elements of the offence being age of the victim; there was penetration. In other words, the facts must disclose the offence charged. In borderline cases, the court must be positive that there was no valid defence under section 8 (5) of the *Sexual offences Act*.

28. In SO v Republic (2024) KEHC 16325 (KLR), the High Court reaffirmed that in a plea of guilty the court must ensure the facts read to the accused cover essential elements, but need not traverse full examination of all exhibits.

Whether the trial court pronounced sentence and whether the sentence was harsh and excessive.

28. The Appellant urged that the trial court did not sentence him but merely proposed a sentence. That he was serving an unlawful life sentence which was not imposed by the court. The Respondent did not respond to this ground.

29. I have looked at the trial record. At page 7 of the typed proceedings capturing sentencing, the record read "In effect I propose a life sentence imprisonment ....."

30. I have read the hand written proceedings. At page 21 the record reads " In effect I impose a life sentence imprisonment....."

31. It follows therefore that the Appellant was hanging onto a typographical error when he urged that he had not been sentenced and that the trial court merely proposed a sentence. The trial court did impose a life sentence.

32. The Appellant strongly urged that the life sentence was harsh, excessive and not supported by evidence of repeat offending, lack of remorse, or aggravation.

33. The Act prescribes mandatory minimum sentences which are graduated according to the age of the victim. In this case the victim was 13 years old. Section 8(3) provides:-

> " 8(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."

28. However, the trial court did not impose 20 years; instead, it imposed life imprisonment stating that the accused was a repeat offender and a threat to the community. The trial court stated that the minimum sentence was not sufficient given the brutal nature of the offence, and the Accused's lack of remorse.

29. In assessing sentence, the court must balance the mandatory minimum, the aggravating and mitigating factors, and ensure that the sentence is proportionate, constitutional, and gives the offender a chance of rehabilitation and the right to hope.

30. In reaching its decision, the trial court considered that the Appellant was a repeat offender. The record shows that the prosecution had brought to the attention of the trial court that there was another related matter in respect of the accused. The record therefore disclosed aggravating circumstances. Besides, the facts revealed that the Appellant violently removed the victim from the safety of her home and dragged her a short distance away where he defiled her repeatedly. She sustained bodily injury to her head, arms and face.

31. In Lowoi v Republic (Criminal Appeal E039 of 2023) [2024] KEHC 8803 (KLR), the Court of Appeal noted that sentencing in defilement has to give due regard to the aggravating and mitigating circumstances, and that the sentencing objectives including deterrence, retribution, rehabilitation, protection of the public must be balanced. It is my finding that the trial court considered these objectives.

32. In the end, I find no reason to interfere with the conviction and sentence. The Appeal lacks merit. It is dismissed.

    The Appellant has 14 days Right of Appeal to the Court of Appeal.

JUDGMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 27TH DAY OF NOVEMBER, 2025.

.....

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Appellant acting in person at Nyeri Prison; Ms. Rukunga for the Respondent. Muriuki (Court Assistant).