



REPUBLIC OF KENYA



**Nturibi v Republic (Criminal Appeal 109 of 2018)
[2025] KECA 2088 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KECA 2088 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL 109 OF 2018
J MOHAMMED, JW LESSIT & A ALI-ARONI, JJA
NOVEMBER 28, 2025**

BETWEEN

ERICK MWENDA NTURIBI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the sentence of the High Court of Kenya at Meru
(Ruth N. Sitati, J.) dated 25th September 2018 in HCCRA No. 143 of 2017)*

JUDGMENT

Background

1. Kariuki Ng'ang'a (the appellant) was aggrieved by the judgment of the High Court (Ruth N. Sitati, J.) dated 25th September 2018, which upheld his conviction and sentence of twenty (20) years imprisonment imposed by the trial court.
2. The appellant was charged with the offence of defilement contrary to Section 8(1) (3) of the *Sexual Offences Act*. The particulars of the offence were that on 26th May 2015 at [Particulars withheld] Village Kunene Sub- location in Meru County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of FM, a girl child aged 14 years. The appellant faced an alternative charge of indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* whose particulars were that on 26th May, 2015 at [Particulars withheld] Village, Kunene sub-location within Meru County, the appellant intentionally caused his penis to touch the vagina of FM, a girl child aged 14 years.
3. The appellant pleaded not guilty to the charge and the prosecution called four (4) witnesses in support of its case.
4. FM, (PW1) was the complainant who testified that she was aged fourteen (14) years and that on 26th May 2015, she was at the appellant's house where she had stayed with him for about one month and



were engaging in sexual intercourse until they were arrested. PW1 testified that she knew the appellant as they were neighbours.

5. PK (PW2) testified that she was PW1's mother and that during the material time, PW1 went missing from home for some days and upon a search on 26th May, 2015 she found her at the appellant's house. PW2 further testified that the appellant and PW1 were living together whereupon PW2 reported the matter to the police. It was her further testimony that PW1 was 14 years at the material time. She produced a birth certificate of PW1 in evidence.
6. Geoffrey Muthoni, (PW3), testified that he was a clinical officer who filled a P3 form for the complainant. It was his testimony that upon examination he found that PW1's hymen was torn and opined that she had been defiled.
7. No. 73xxx IP Agnes Nkiba (PW4) testified that she was the investigating officer for the case and at the material time she was attached at Nchiru Police Station. She testified that on 26th May, 2015, PW1's parents made a complaint at the police station that their daughter (PW1) had dropped out of school and was residing with the appellant in his house. PW4 further testified that she accompanied PW1's parents to the appellant's house where they found PW1. It was her further evidence that the appellant was arrested at his place of work in a construction site whereupon they escorted him to his house where they found PW1. The appellant was charged with the offence of defilement.
8. After close of the prosecution case, the appellant was found to have a case to answer and was put on his defence. He gave sworn evidence but he did call any witnesses. The appellant denied committing the offence. He stated that at the material time, he had rented his house to his friend named Muchiri. It was his evidence that on the day that he was arrested, he was at work in a construction site. That he was arrested on claims that he had locked a girl in his house and was escorted to his house by the police, who found the girl therein. The appellant maintained that he was not the person who took the girl to his house but that it was his friend, one Muchiri who was living with the girl as husband and wife.
9. Upon conclusion of the evidence, by a judgment dated 12th June, 2016, the trial court found the appellant guilty of the charge. The trial court held in part as follows:

“The upshot of all this is that the prosecution had proved their case beyond reasonable doubt that it was the accused who committed the offence. The accused's defence cannot hold.”
10. The appellant was then convicted of the main charge of defilement as per Section 215 of the Criminal Procedure Code and sentenced to twenty (20) years imprisonment.
11. Aggrieved by the conviction and sentence, the appellant proffered his first appeal to the High Court. In a Petition dated 21st November, 2017, the appellant raised 7 grounds of appeal contending that the trial court erred in law and fact by:
 - i. Failing to consider the circumstances behind the accusations and charges against the appellant;
 - ii. Failing to note that was the complainant who deceived the appellant to believe that she was of mature age;
 - iii. Failing to order the DNA test to both parties to ascertain the truth;
 - iv. Failing to consider that the appellant was not given a copy of the statement at the earliest opportunity to enable him to understand the charges against him;



- v. Failing to comply with the provisions of section 200(3) of the CPC to recall the witnesses for cross-examination;
 - vi. Rejecting the appellant's defence without giving cogent reasons;
 - vii. That the sentence meted out was harsh and excessive.
12. The High Court (R. N. Sitati, J.) re-evaluated and analysed the evidence on record and in a judgment dated 25th September, 2018 dismissed the appellant's appeal for lack of merit and confirmed the conviction and sentence imposed by the trial court. The 1st appellate court found in part as follows:
- “In the premises, I am satisfied beyond any reasonable doubt that the three ingredients of the offence of defilement were proved by the prosecution. I would therefore find no reason for interfering with the conviction. I also find no reason for interfering with the sentence because the sentence meted out is the one prescribed by the law.”
13. Undeterred, the appellant filed his second appeal to this Court raising grounds that the High Court erred in law by:
- i. Failing to note that the prosecution case was not proved beyond reasonable doubts;
 - ii. Failing to note that the complainant's evidence adduced before the court was a shell to another person's offence;
 - iii. Dismissing the appeal without considering the circumstances surrounding the matter;
 - iv. Failing to note that DNA test for both parties was not conducted to ascertain the truth concerning the matter;
 - v. Failing to note that the appellant's defence was not considered; and
 - vi. Failing to note that the appellant had rented out his apartment.
14. The appellant, in his memorandum of appeal dated 25th September, 2018, sought for his conviction to be quashed and the sentence set aside.

Submissions

15. The appeal was disposed by way of written submission with oral highlights. The appellant, acting in person filed his written submissions while the respondent was represented by Ms. Adhi, Prosecution counsel. On record, there are two sets of written submissions opposing the appeal.
16. Although the memorandum of appeal and the grounds therein expressed that the appeal was against conviction and sentence, the appellant's submissions were limited to sentence, which he affirmed orally.
17. The appellant submitted that he had sought forgiveness from the victim's family and that he was remorseful, thus prayed that this Court consider giving him a non-custodial sentence for the remaining period of his sentence. The appellant further submitted that while in prison, he enrolled in several rehabilitation courses and was awarded certificates. It was his further submission that he is a family man, the breadwinner of his family and that his family is adversely affected by his absence and that at the time of the commission of the offence, he was a young man aged 25 years.
18. The appellant further submitted that the sentence imposed did not consider the relevant provisions of the law with reference to minimum sentence, and prayed for review of the sentence to a shorter time.



19. Ms. Nandwa, in her written submissions, opposed the appeal and submitted that the sentence meted out to the appellant was not excessive, but well within the law. Counsel relied upon the Sentencing Guidelines 2023, r part II at 2.3.16 which provides that:

“Where the law provides mandatory minimum sentence, the court is bound by those provisions and must not impose a sentence lower than what is prescribed.”

Determination

20. We have considered the record of appeal, the submissions, the authorities cited and the law. This is a second appeal Section 361(1) of the Criminal Procedure Code enjoins us to consider only questions of law. In the case of *Karani vs Republic* [2010] 1 KLR 73, the Court stated as follows:

“This is a second appeal. By dint of the provisions of Section 361 of the Criminal Procedure Code, we are enjoined to consider only matters of law. We cannot interfere with the decision of the superior court on facts unless it is demonstrated that the trial court and the first appellate court considered matters, they ought not to have considered or that they failed to consider matters they should have considered or that looking at the evidence as a whole they were plainly wrong in their decision, in which case such omission or commission would be treated as matters of law.”

21. The only issue for consideration in this appeal is whether there was any error of law by the two courts below in imposing the twenty years’ sentence upon the appellant.

22. Section 8 of the *Sexual Offences Act*, 2006 provides that:

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

“(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.”

23. The law is settled that harshness of sentence is not an issue of law for determination in a second appeal. The Supreme Court decision in *Republic v Joshua Gichuki Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR)(12 July 2024) (judgment)* stated that:

“The Court of Appeal’s jurisdiction on second appeals is limited to only matters of law and it could not interfere with the decision of the High Court on facts unless it was shown that the trial court and the first appellate court considered matters they ought not to have considered, failed to consider matters they should have considered, or were plainly wrong in their decision when considering the evidence as a whole. In such a case, such omissions or commissions would be treated as matters of law. Consequently, the respondent’s appeal on the grounds that his sentence was harsh and excessive was not one that the Court of Appeal could lawfully determine as it fell outside the purview of the Court of Appeal’s jurisdiction.”



24. There is no material placed by the appellant to demonstrate any error of law in sentencing by the two courts below. This Court in the case of Octavious Waweru Kibugi V Republic Criminal Appeal No. 41 of 2018 stated as follows:

“On the issue of sentence, we defer to the recent decision of the Supreme Court in Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others {Amicus Curiae} (Petition E018 of 2023} [2024] KESC 34 (KLR) where the Court held that the minimum mandatory sentences under the Sexual Offences Act remain lawful until determined otherwise by the Supreme Court when the matter is properly escalated to that Court. That being the case, this being a second appeal, severity of sentence becomes a question of fact which is, by dint of section 361 (2) of the Criminal Procedure Code, outside our remit.”

25. By parity of reasoning, we find that this appeal is devoid of merit and we dismiss it.

26. Orders accordingly.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF NOVEMBER, 2025

JAMILA MOHAMMED

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI - ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

