



**Wanga v Republic (Criminal Appeal E158 of 2024)
[2025] KEHC 18817 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E158 OF 2024
REA OUGO, J
DECEMBER 19, 2025**

BETWEEN

OLIVER WANGA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from a sentence meted by Hon. R.K. LANGAT (PM) in Sirisia Principal Magistrate's Court, Criminal Case No. E031 of 2023 was meted out on the 12/9/2024)

JUDGMENT

1. The appellant was charged and convicted of the offence of defilement contrary to section 8 (1) (4) of the *Sexual Offences Act*. The appellant was sentenced to 15 years' imprisonment.
2. The appellant appeals against the sentence, seeking a more lenient one. The grounds of his appeal are that he is a first offender, remorseful, and that the 15-year sentence was too harsh and excessive.
3. In his appeal, the appellant argues that the trial court failed to consider the surrounding circumstances of the incident, contrary to section 33 of the *Sexual Offences Act*. He also submits that the evidence of Pw1 was not corroborated in a manner that would warrant a conviction of 15 years' imprisonment. The appellant seeks to have the conviction and sentence set aside in his petition, but at the hearing of the appeal he informed this court that his appeal is only on sentence.
4. The respondent opposed the appeal, arguing that any other sentence would be unlawful.



Determination

5. The appellant was charged under section 8 (1) and 8 (4) of the [Sexual Offences Act](#). Section 8(4) provides that

“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.”

6. The complainant was 16 years old and section 8(4) was applicable to the appellant during sentencing. The Supreme Court in Republic v Joshua Gichuki Mwangi (Petition E018 of 2023) [2024] KESC 34 (KLR)(delivered on 12th July, 2024) stated:

“56. Mandatory sentences leave the trial court with absolutely no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentences. What is prescribed is the least severe sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence. In fact, to use the words mandatory and minimum together convolutes the express different definitions given to each of the two words. Although, the term ‘mandatory minimum’ can be found used in different jurisdictions, including the United States, and in a number of academic articles, it is not applicable as a legally recognized term in Kenya. In this country, a mandatory sentence and minimum sentence can neither be used interchangeably nor in similar circumstances as they refer to two very different set of meanings and circumstances.

57. In the Muruatetu case, this court solely considered the mandatory sentence of death under Section 204 of the Penal Code as it is applied to murder cases; it did not address minimum sentences at all. Therefore, mandatory sentences that apply for example to capital offences, are vastly different from minimum sentences such as those found in the [Sexual Offences Act](#), and the Penal Code. Often in crafting different sentencing for criminal offences, the drafters of the law in the Legislature, take into consideration a number of issues including deterrence of crime, enhancing public safety, sequestering of dangerous offenders, and eliminating unjustifiable sentencing disparities.”

7. From the foregoing, I uphold the sentence of 15 years imprisonment. The appeal is dismissed.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF DECEMBER 2025.

R.E. OUGO

JUDGE

In the presence of:

Oliver Wanga/ Appellant

Mr Minishi -For the Respondent

Wilkister -C/A

