



**Kirui v Republic (Criminal Appeal E019 of 2021)  
[2025] KECA 2274 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KECA 2274 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL E019 OF 2021  
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA  
DECEMBER 19, 2025**

**BETWEEN**

**KELVIN KIRUI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment of the High Court of Kenya at  
Kisii, (Majanja, J.) dated 15th March, 2019 in HCCRA No. 66 of 2018)*

**JUDGMENT**

1. This is a second appeal from the judgment of the High Court of Kenya at Kisii (Majanja, J.) delivered on 15<sup>th</sup> March 2019 but which is limited to the sentence only. The facts leading to this appeal are as follows: The appellant, Kelvin Kirui, was initially charged before the Principal Magistrate’s Court at Kilgoris with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#) “the SOA”. The particulars of the offence alleged that between 20<sup>th</sup> August 2017 and 5<sup>th</sup> October 2017 the appellant intentionally and unlawfully penetrated the genitalia of a girl aged 15 years, namely MW (real name redacted for obvious reasons).
2. Upon arraignment, the appellant returned a plea of not guilty and the trial ensued. However, after the prosecution had led evidence from the complainant (PW1) and her mother, (PW2), the appellant changed his plea to one of guilty. The charge was once again read afresh to him and he pleaded guilty. Despite being cautioned by the trial court severally, on the gravity of the offence and the sentence it will attract, the appellant nonetheless maintained his guilty plea and was accordingly convicted on his own plea of guilty. In mitigation, the appellant stated that he had cohabited with MW for six months as a wife, having obtained the consent of her parents, and requested leniency from the court.



3. The trial court after considering the mitigation proffered by the appellant sentenced him to twenty years' imprisonment, being the mandatory minimum sentence contemplated under Section 8(3) of the [SOA](#).
4. On first appeal, the High Court of Kenya at Kisii (Majanja J) upheld both the conviction and sentence. Consequently, the appeal was dismissed in its entirety.
5. The appellant now challenges the sentence imposed in this second and perhaps last appeal.
6. When the appeal came up for plenary hearing, the appellant was present on our virtual platform in person from Naivasha maximum prison, whilst, Mr. Koima Henry, learned Prosecution counsel appeared for the respondent. In support thereof the appellant pleaded that we review downwards the sentence imposed by the trial court and confirmed by the first appellate court putting into consideration the time he had spent in remand custody as his trial was being processed.
7. In response, counsel for the respondent submitted that the sentence imposed was the statutory minimum under Section 8(3) of the [SOA](#). She relied on the Supreme Court decision in [Republic v Joshua Gichuki Mwangi; Initiative for Strategic Litigation in Africa \(ISLA\) & 3 others \(Amicus Curiae\)](#) [2024] KESC 34 (KLR), where the Court affirmed the duty of trial courts to impose sentences strictly in accordance with statutory provisions under the SOA. He thus urged the Court to dismiss the appeal for lack of merit, asserting that the sentence imposed was procedurally sound and legally justified.
8. This is a second appeal on sentence alone. The Court's jurisdiction is strictly circumscribed. In [Wanjema v Republic](#) [1971] EA 493, the Court stated:

“An appellate court should not interfere with the sentence unless it is manifestly excessive in the circumstances or the trial court overlooked some material factor or acted on a wrong principle.”
9. In the present appeal, the trial court sentenced the appellant to twenty years' imprisonment which was affirmed by the High Court. We note that the constitutionality and application of mandatory minimum sentences under the [SOA](#) was dealt with by the Supreme Court's decision in [Republic v Joshua Gichuki Mwangi](#) (*supra*). In the case, the Supreme Court upheld the validity of mandatory minimum sentences and clarified the scope of judicial discretion in sentencing under the [SOA](#). The Court stated:

“The mandatory minimum sentences prescribed under the [Sexual Offences Act](#) remain constitutionally valid. The decision in Muruatetu did not invalidate such provisions. Trial courts are bound to apply the statutory minimums unless the law expressly provides for discretion.”
10. Additionally, the Court emphasized the importance of consistency and judicial restraint:

“The Court of Appeal erred in assuming jurisdiction over constitutional interpretation not raised at the High Court. Mandatory minimums under the [Sexual Offences Act](#) are not unconstitutional per se, and any deviation from statutory prescription must be grounded in express legislative authority.”
11. This decision reinforces that, in cases of defilement, the trial court is obligated to impose the statutory mandated sentences and there no two ways about it. Such court has no discretion whatsoever to



impose any other sentence and appellate courts must respect that statutory framework unless there is a demonstrated error in law or principle.

Having reviewed the record and the applicable law, we find no basis to interfere with the sentence. The trial court acted within the confines of the law, and the sentence imposed was the statutory minimum for the offence committed. However, we note that though upon arraignment in the trial on 20<sup>th</sup> November 2017, the appellant was immediately granted bond, it appears that he was unable to meet the terms thereof and thus remained remand custody until upon his conviction and sentence on 14<sup>th</sup> May 2018. In terms of Section 333(2) of the *Criminal Procedure Code*, the sentence imposed shall therefore be computed from 20<sup>th</sup> November 2017.

12. To that very, very limited extent therefore, the appeal on sentence succeeds.

**DATED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

**H.A. OMONDI**

.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

