



**Mutonga v Republic (Criminal Appeal E100 of 2024)
[2026] KEHC 420 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E100 OF 2024
S MBUNGI, J
JANUARY 27, 2026**

BETWEEN

PAUL SIFUNA MUTONGA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgment and decision of Hon.
T.A. Obutu (SPM) delivered on 13th September 2023)*

JUDGMENT

1. The appellant herein had been charged with the offence of defilement contrary to section 8 (1) (3) of the [sexual offences Act](#) no. 3 of 2006.
2. The particulars of the offence are that on diverse dates between 31st August 2023 and 6th September 2023 at Matungu sub-county within Kakamega county, intentionally caused his penis to penetrate the vagina of F.C.O, a child aged 15 years old.
3. He was also charged with an alternative count of committing an indecent act with a child contrary to section 11 (1) of the [Sexual Offences Act](#) No. 3 of 2006.
4. The particulars are that on diverse dates between 31st August 2023 and 6th September 2023 at Matungu sub-county within Kakamega county, intentionally caused his penis to come into contact with the vagina of F.C.O without her consent.
5. The appellant took his plea on 08/09/2023, where he pleaded guilty to the charges. The court adjourned the plea to 11/09/2023 to give the appellant a chance to consider his position, as the offence had a severe sentence.
6. On 11/09/2023, the appellant was given another opportunity to revise his plea, and he still pleaded guilty to the offence. The facts of the case were read to the appellant, and he admitted to the facts



- after which he was convicted on his own plea of guilty. On mitigation, he admitted that he was in a relationship with the minor, who was aged 15 years and still in school; however, he claimed that the minor wanted to leave school and get married to him.
7. On 13/09/2023, the trial court sentenced the appellant on his own plea of guilt and, upon considering the facts and the appellant's mitigation, sentenced him in accordance with the [sexual offences Act](#) and sentenced him to 20 years' imprisonment with no option of fine.
 8. The appellant, being dissatisfied with the conviction and the sentence of the trial court, filed his petition of appeal dated 23rd October 2024, the current appeal, based on the following grounds;
 - a. That the trial court erred in law in not proving the ingredients of the offence in the instant case beyond a reasonable doubt.
 - b. That the trial court erred in law and in fact in relying on fanciful and remote possibilities to convict the appellant
 - c. That the trial court erred in law and in fact in not weighing the conflicting evidence in the prosecution case that was/is inconsequential to the conviction.
 - d. That, the trial court erred in law and in fact in not appreciating the appellant's cognate defence that overwhelmed the prosecution's case.
 9. The appellant prays that the court quash the conviction, set aside the sentence, and set the appellant free.
 10. The appeal was canvassed by way of a written submission.

Appellant's submission

11. In his submission dated 14th July 2025, the appellant avers that although he pleaded guilty to his own violation, he was not given legal representation as it was the first time he was arrested and he had limited knowledge in law, hence the reason he appealed against the sentence and the conviction.
12. He claimed that, being the first offender and the fact that he pleaded guilty, the court should consider the sentencing policy guidelines, and the court should have imposed a sentence less than the minimum.
13. He avers that since he pleaded guilty, the sentence should have been less severe and further claimed that the minor was the one who went to the accused's home and decided to stay there on her own violation a fact that the court would have considered in its sentencing if they understood the story behind the allegations of defilement. And relied on the case of *Martin Charo vs. rep* (2016) eKLR. He submitted that the court should have carefully scrutinized the minor's age and apportioned an appropriate sentence in the circumstances and claims that he was genuine in court and it was the girl who was tired of school and wanted to get married to him and prayed that the court avails him a fresh trial to defend his case and further that the appeal be allowed and the sentence be set aside and he be acquitted.

Analysis and determination

14. This being a first appeal, this court is under a duty to re-evaluate, re-analyse, and reconsider the entire record afresh and draw its own conclusions, bearing in mind that it did not see or hear the witnesses testify. This principle was authoritatively stated in *Okeno v Republic* [1972] EA 32.



15. The courts are clear that, where a conviction is founded on a plea of guilty, the role of an appellate court is circumscribed. The court must interrogate whether the plea was unequivocal, whether the procedure laid down in law was complied with, and whether the sentence imposed was lawful and appropriate in the circumstances.
16. The first issue for determination is whether the plea of guilty was unequivocal. I have perused the lower court proceedings by Hon. T.A Obutu and note that the appellant first took a plea on 8/9/2023, where he pleaded guilty, which was later deferred to 11/9/2023 as the trial court gave him time to go and rethink his guilty plea, given the seriousness of the offence that he had been charged with.
17. The appellant appeared before the court on 11/09/2023, where he was read for the charge and the facts, and he pleaded guilty, detailing the offence and the age of the minor, the period of the offence and the penetrative act. The appellant pleaded guilty to the offence.
18. Section 348 of the CPC provides: "No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence." This provision has been consistently upheld by superior courts. In *Adan v Republic* [1973] EA 445, the Court of Appeal emphasised that where an accused pleads guilty unequivocally, no appeal lies against the conviction, save on the sentence
19. The appellant not only admitted the facts but, during mitigation, confirmed the age of the complainant and acknowledged that she was still in school. His explanation that the complainant wished to leave school and marry him did not amount to a denial of the offence but rather reinforced the factual basis of the charge.
20. In *Kariuki v Republic* [2014] eKLR, the Court of Appeal held that a plea is unequivocal where the accused admits all the essential ingredients of the offence and does not raise facts that negate criminal liability. The appellant's mitigation herein did not negate penetration, age, or his involvement. The ground of appeal alleging that the ingredients of the offence were not proved beyond a reasonable doubt is therefore misconceived, as proof beyond a reasonable doubt is satisfied by an unequivocal plea of guilty, which is itself the strongest form of evidence.
21. The appellant contends that he was unrepresented and had limited knowledge of the law. While the right to legal representation is constitutionally guaranteed under Article 50(2)(h) of *the Constitution*, it is only mandatory at state expense where substantial injustice would otherwise result.
22. The record before this court shows that the trial magistrate exercised caution by deferring the plea, warning the appellant of the seriousness of the offence and its attendant sentence. This mitigates any allegation of procedural unfairness.
23. Accordingly, this court finds that the plea was taken knowingly, voluntarily, and intelligently, and the absence of counsel did not occasion a miscarriage of justice.
24. On whether the sentence was harsh or excessive. The appellant was convicted under section 8(3) of the *Sexual Offences Act*, which prescribes a mandatory minimum sentence of twenty (20) years imprisonment where the victim is aged between 12 and 15 years.
25. The trial court imposed the statutory minimum sentence. The appellant urges this court to impose a lesser sentence, citing his status as a first offender, his plea of guilty, and the alleged consent of the complainant.



26. It is now settled law that consent is not a defence to defilement, and the conduct or wishes of a minor are legally irrelevant. This position was emphatically stated in *Kassim Ali v Republic* [2006] eKLR and reaffirmed in *Charles Wamukoya Karani v Republic* [2010] eKLR.
27. On the issue of mandatory minimum sentences, the Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR does not automatically apply to offences under the *Sexual Offences Act*.
28. In the present case, the trial court exercised its discretion lawfully by imposing the minimum sentence prescribed by statute. There is therefore no basis for this court to interfere.
29. The principles guiding appellate interference with sentence were set out in *Ogalo s/o Owuora v Republic* [1954] EACA 270, namely that an appellate court will only interfere where: The sentence is illegal; The trial court took into account irrelevant factors; The sentence is manifestly excessive. None of these thresholds has been met.
30. The appellant further prayed that the appellate court considers his case for a retrial. It should be noted that a retrial is not ordered to enable an accused person to fill gaps in his defence or to avoid the consequences of a lawful plea. In *Ahmed Sumar v Republic* [1964] EA 481, the court held that a retrial should only be ordered where the interests of justice demand it.
31. The appellant voluntarily pleaded guilty and was sentenced lawfully. Ordering a retrial in such circumstances would offend the principle of finality in criminal proceedings.
32. In light of the foregoing analysis, this court finds that:
 - a. The appellant's plea of guilty was unequivocal;
 - b. The conviction was lawful and proper;
 - c. The sentence imposed was legal, justified, and in accordance with the *Sexual Offences Act*.
33. Accordingly, the appeal against conviction and sentence lacks merit and is hereby dismissed in its entirety.
34. The conviction and sentence of twenty (20) years imprisonment imposed by the trial court are hereby upheld.
35. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF JANUARY, 2026.

S. N MBUNGI

JUDGE

In the presence of:-

CA: Ang'onga/Nekesa

Mr. Makotsi Court Prosecutor present.

Appellant present.

