Aganda v Republic (Criminal Appeal E116 of 2024)
[2026] KEHC 2144 (KLR) (26 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2144 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL E116 OF 2024

KW KIARIE, J

FEBRUARY 26, 2026

BETWEEN

SAMUEL MULERA AGANDA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the original conviction and sentence in S.O. Case NO. EO35 of 2022 of the Chief Magistrate's Court at Migori by Hon. A.C. Munyuny, Resident Magistrate)

JUDGMENT

1. Samuel Mulera Aganda, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* No. 3 of 2006.

2. The particulars of the offence are that on the 26th day of July 2022, at [Particulars Withheld], Uriri sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of J.A., a child aged ten years.

3. The appellant was sentenced to serve thirty years' imprisonment. He was aggrieved and filed this appeal against the sentence. He raised grounds of appeal as follows:

    a. The learned trial magistrate erred in law and fact by failing to consider that the period already served in custody was not considered by the trial court, which is 10 months, see section 333(2) of the Criminal Procedure Code.

    b. The honourable court shall be pleased to consider that the sentence meted out is severe and ambiguous in nature, thus reduced as it may be granted.

    c. That the honourable court shall be pleased to consider that the appellant was a first offender, remorseful and proactively reformed.

d. That the court shall be pleased to balance the evidence relied upon, weigh the aggravating factors in the scale of justice and render the final decision in the appellant's favour by taking judicial notice of sentence reduction.

4. The respondent did not file any grounds of opposition or submission.

5. The appeal by the appellant is on sentence.

6. One of the appellant's complaints was that the learned trial magistrate did not consider the time already spent in custody while awaiting trial. This is not factually correct. In her sentence, the learned trial magistrate stated that the sentence would commence on the 29th July 2022, the date of his arrest. This ground, therefore, lacks merit.

7. An appellate court would interfere only where there exists, to a sufficient extent, circumstances entitling it to do so. Nillson vs Republic [1970] E.A. 599 as follows:

> The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewsity (1912) C.CA 28 T.LR 364.

8. Section 8 (2) of the *Sexual Offences Act* provides:

> A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

9. The appellant received an illegal sentence, for it was below the prescribed one. Because the respondent did not issue the necessary notice to the appellant, I will not alter the sentence to his disadvantage.

10. The conclusion from the above analysis of the available evidence is that the appeal has no merit and the same is dismissed.

DELIVERED AND SIGNED AT MIGORI ON THIS 26TH DAY OF FEBRUARY 2026

KIARIE WAWERU KIARIE

JUDGE