



**Mwita v Republic (Criminal Appeal E085 of 2024)
[2026] KEHC 2210 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2210 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL APPEAL E085 OF 2024
KW KIARIE, J
FEBRUARY 26, 2026**

BETWEEN

SAMMY MWITA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case NO. E056 of 2023 of the Senior Principal Magistrate's Court at Kehancha by Hon. A.O. Casmir, Resident Magistrate)

JUDGMENT

1. Sammy Mwita, the appellant herein, was convicted of the offence of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence are that on the 15th day of October 2023, at [Particulars Withheld], Kehancha township, in Kuria West sub-county within Migori County, he intentionally touched the breasts of S.B.O., a child aged sixteen years.
3. The appellant was sentenced to serve ten years' imprisonment. He was aggrieved and filed this appeal against the sentence. He seeks a reduction of the prison term.
4. The respondent did not file any grounds of opposition or submission.
5. The appeal by the appellant is on sentence.
6. 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 Shershecity* (1912) C.CA 28 T.LR 364.

7. Section 11 (1) of the *Sexual Offences Act* provides:

Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

8. The appellant was a first offender. Having considered the circumstances of the offence, I am persuaded to interfere with the learned magistrate's sentence. I therefore set aside the sentence. It is substituted with a sentence of 5 years' imprisonment. The appellant remained in custody during the pendency of the trial. The sentence will therefore commence on the 15th day of October 2023, the date of his arrest.

9. The appeal on the sentence is therefore successful to the extent specified above.

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

KIARIE WAWERU KIARIE

JUDGE

