



REPUBLIC OF KENYA



**Garama v Republic (Criminal Appeal E014 of 2024)  
[2026] KEHC 2516 (KLR) (4 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2516 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL APPEAL E014 OF 2024**

**JN NJAGI, J**

**MARCH 4, 2026**

**BETWEEN**

**OMAR MATHO GARAMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon. R. M. Amwayi, Senior Resident Magistrate, in Kaloleni Principal Magistrate's Court Sexual Offence Case No. E043 of 2021 delivered on 21/11/2022)*

**JUDGMENT**

1. The Appellant herein was convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the offence were that on diverse dates between the month of December 2020 and 25<sup>th</sup> November 2021 at (name withheld) village in Kaloleni sub county within Kilifi county he intentionally and unlawfully caused his penis to penetrate the vagina of A.S.T. (herein referred to as the complainant), a child aged 15 years.
2. The Appellant was sentenced to serve 10 years imprisonment. He was aggrieved by the sentence and lodged the instant appeal. The grounds of appeal as per his undated amended grounds of appeal are that:
  1. The learned trial magistrate erred in both facts and law in failing to appreciate the fact that she sentenced the Appellant to ten years imprisonment without considering the circumstances of his case.
  2. The learned trial magistrate erred in both facts and law in failing to appreciate the charges as laid out were not proved since the critical elements of defilement were not proved to the required standards.



3. The learned trial magistrate erred in both facts and law in failing to appreciate that the instant matter was materially contradicted and inconsistent hence insufficient to attain a conviction let alone sustain one.
  4. The learned trial magistrate erred in both facts and law in not considering that the Appellant's statement in defence was on point pragmatic, plausible and was not dislodged hence still stands and seek its reinstatement rendering an acquittal.
  5. Since the Appellant cannot recall all what transpired during the trial process, He seeks to be furnished with court records and judgment to enable him file other grounds during the hearing of the appeal.
3. The case for the prosecution was that the complainant was in the year 2020 class 7 primary school pupil. She was living with her mother PW1. The Appellant was in class 8 in the same primary school that the complainant was attending. The two started a love affair and engaged in sexual intercourse on several occasions. In June 2021 the complainant got pregnant. She was at the time aged 15 years. The complainant and her mother PW2 reported the matter at Kaloleni police station. She was taken to Mariakani sub county hospital where she was examined by a clinical officer PW1 who found that she did not have hymen. A pregnancy test was conducted that revealed that she was 23 weeks pregnant. The clinical officer completed the complainant's P3 form and sent her for age assessment that was assessed at 15 years.
  4. The case was investigated by PC Murei PW4 of Kaloleni police station. It was her evidence that the case was reported to them on 15/11/2021. She issued her a P3 form and escorted her to Mariakani sub county hospital for examination. She thereafter arrested the Appellant and charged him with the offence. The complainant gave birth when the case was going on in court. A DNA sampling was done at Mombasa government Laboratory that indicated that the Appellant was the father to the baby born to the complainant.
  5. During the hearing of the case in court the clinical officer, PW1, produced the P3 form, the treatment notes, the lab results and complainant's age assessment report as exhibits, P.Exh.1- 5 respectively. The investigating officer produced the DNA report as exhibit, P.Exh. 6.
  6. In his defence the Appellant stated in a sworn statement that he was aged 22 years and was at that time a form one student. That in year 2019 in the year 2019 h started a love affair with the complainant and they had sexual intercourse on several occasions in the course of which she got pregnant. That when her parents learnt about it they went to his parents. They discussed about it and his parents admitted that he was responsible for the pregnancy and they agreed to maintain the child born to the complainant. That both parents agreed to come to court and make an agreement for the welfare of the child. He asked the court to allow the parents to enter into a consent to that end.
  7. The appeal proceeded by way of written submissions. The Appellant submitted that the sentence meted on him was harsh and excessive. That the trial court failed to consider his mitigation that he was a first offender, that he was remorseful and ready to take responsibility for for his actions.
  8. The Appellant submitted that the trial court failed to appreciate that both the Appellant and the complainant were primary school pupils who had fallen in love despite the differences in their age. That theirs was Romeo and Juliet kind of case. That both were youngsters who engaged in unlawful sexual relations. That the offence was committed due to frivolities of youth. That in the circumstances of the case the sentence of 10 years was harsh and excessive.



9. The Appellant submitted that he has joined rehabilitation programs in prison whereby he joined the prison school and he is now in form 2. That it is not in the interests of the child born to the complainant to be kept away from its father for a period of 10 years when the Appellant is serving sentence.
10. The Appellant urged the court to review the sentence of 10 years and re-sentence him to probation or the period already served in prison. It was submitted that this court is obligated to review the sentence of a prisoner who has served a substantial part of his sentence.
11. The Respondent filed submissions dated 19<sup>th</sup> March 2025 which dealt with the issue of conviction of the Appellant though the Appellant did not challenge the conviction in his undated amended grounds of appeal. His appeal was confined to the sentence meted on him. The submissions of the respondent were in that respect not relevant to the appeal.
12. The appellant was convicted under section 8(3) of the *Sexual Offences Act*, 2006, that provides for a sentence of not less than 20 years imprisonment where a person is found guilty of defiling a child of the age of between 12 and 15 years. The victim in the case for the Appellant was aged 15 years. The Appellant was however sentenced on 21<sup>st</sup> November 2022 when the interpretation of the law as stipulated in section 8 of the *Sexual offences Act* was that the courts had discretion to impose lesser sentences than imposed by the Act. This was before the Supreme Court in the case of Republic vs Joshua Gichuki Mwangi (Petition E018 of 2023) [2024] KESC 34 (KLR) (delivered on 12th July, 2024) decreed that the mandatory minimum sentences in the *Sexual Offences Act* are not unconstitutional and that trial courts have no discretion to impose anything below the minimum sentences as set in section 8 of the *Sexual Offences Act*.
13. Under the doctrine of stare decisis, this court is bound by the decisions of the Supreme Court. The law as it stands now is that this court has no discretion to impose a lesser sentence than set out under section 8(3) of the *Sexual Offences Act*, which is 20 years imprisonment. The Appellant is lucky that he was sentenced at a time when the interpretation of the law favoured him. A mandatory sentence cannot be said to be excessive.
14. It is therefore the holding of this court that it does not have the discretion to impose a lesser sentence as implored by the Appellant. The appeal is consequently dismissed.

**DELIVERED, DATED AND SIGNED AT GARSEN THIS 4<sup>TH</sup> DAY OF MARCH, 2026**

**J. N. NJAGI**

**JUDGE**

In the presence of:

.....for Respondent

Appellant:

Court Assistant: Rahma

