



REPUBLIC OF KENYA



**Kiplagat v Republic (Criminal Appeal E046 of 2024)
[2026] KEHC 2961 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL APPEAL E046 OF 2024
E OMINDE, J
MARCH 5, 2026**

BETWEEN

EMMANUEL KIPLAGAT APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentencing of Hon E. Kigen (PM) in Iten Senior Principal Magistrate's Court in Criminal Case No. E047 of 2023 delivered on 18/09/2024)

JUDGMENT

1. The Appellant was convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* No. 3 of 2006 and sentenced to 20 years' imprisonment. The particulars of the charge were that on 16th October, 2023 at around 1730 hours in Keiyo North Sub-location within Elgeyo Marakwet County, he intentionally and unlawfully touched the vagina of NJ, a child aged 13 years, with his penis.
2. He was also charged with an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the charge were that on 16th October, 2023 at around 1730 hours in Keiyo North Sub-location within Elgeyo Marakwet County, he intentionally and unlawfully touched the vagina of NJ, a child aged 13 years, with his penis.
3. The Appellant pleaded not guilty to the abovementioned charges. The matter proceeded to trial after which he was found guilty, convicted and sentenced to serve 20 years' imprisonment. The Appellant, being dissatisfied with the decision of Hon. E. Kigen (PM) he appealed against both conviction and sentence. The appeal is based on the following grounds reproduced in verbatim as follows:
 1. That the learned Honourable Magistrate erred failed to appraise herself on the evidence tendered by the defence thereby finding conviction on a vacuum.



2. That the Honourable Magistrate erred in both law and fact by misdirecting herself and convicted the Appellant on insufficient evidence when the evidence on record is contrary.
3. That the learned Honourable Magistrate failed to appreciate the facts that I was legally possible for him to rely on reported speech elements of collaboration to reach a conviction.
4. That failure by the learned Honourable Magistrate to explain the consequences of charges and educate the Appellant of the effect of each stage of trial amounts to preconceived perception to crucify the Appellant unfairly.
5. That the trial Magistrate erred in both law and facts by imposing a harsh and excessive sentence.

Prosecution Evidence

4. The prosecution called 6 (six) witnesses in support of the charges.
5. PW1 was the complainant. She stated that she is in Grade 6. She testified that on 16th October 2023, she was at home and about 5:00 pm, she went to collect milk at a neighbour's house. That he is called Wesley. That she entered the house and found the Appellant and that she asked for milk and he told her that there was no milk. She stated that she turned to leave but he locked the door and pulled her towards the cupboard next to him and that he pushed her to the floor and removed her pant.
6. She testified that she was wearing a dress, he pulled her dress up and removed her pant and he then did bad manners to her. He stated that the Appellant had a maroon trouser which he removed as well and he then inserted his penis into her vagina (pointing her private parts). She stated that after incident, her sister L came and then she went home and reported to her sister what had happened and that her sister called her mother who then informed the Deputy-Headteacher.
7. She added that the following day she went to school and her teacher and father took her to hospital. She stated that she then recorded her statement at Iten Police Station and was taken to Iten Referral Hospital for treatment. She testified that the Appellant was living at their neighbour's place at the time. She stated that she was born on 21/03/2010 and that she is 13 years. She then produced her copy of Birth Certificate, P3 Form and Lab test. Upon being cross-examined, PW1 stated that the time was 5:00 pm.
8. PW2 was LL, she stated that she in Form 2. She testified that on 16th October 2023, she was in school and she came home in the evening at around 6:30 pm and did not find her sister and she went to check for her in her elder's sister house but did not find her so she went to check where they usually buy milk and found the Appellant and on inquiring from him, he told her that the minor had not come to collect milk form there but had gone to the Centre.
9. She stated that she saw her sister's shoes outside the door and she went and reported to her elder brother and they decided to look for her and, on their way, they met the minor and took her home. She testified that the minor told them that she had knocked the house to collect milk and the Appellant told her that there was no milk and pulled her inside the house and told her that she was not going to leave. She stated that they called their parent but did not find him, they also waited for the Appellant at his house up to 10:00 pm but he did not come back and in the morning and they called JK, their father. Upon being cross-examined PW2 stated that she saw the Appellant's shoes and that of the minor outside the Appellant's house.
10. PW3 was JK, the complainant's father. He stated that on 17th October 2023, he received a call from L's mother and she told him that the complainant had been defiled. He stated that he went back home in the morning and went to school and informed the teacher and asked them to ask the minor if it was



true and the minor confirmed that she had been defiled. He stated that the Headteacher gave him a motor cycle which they used to go to Iten Referral Hospital where they were issued with the P3 Form which was duly filled. He stated that the minor had been defiled by Mr. Kiplagat and that the doctor confirmed the injuries.

11. PW4 was Sammy Kipkorir Kiptum, the complainant's teacher. He testified that on 17th October 2023, a parent came to school at 9:30 and stated that he wanted to talk to his daughter, the complainant who was doing exams. He stated that after examination, they called the minor and they asked the father what he wanted and he told them that he had found a report that the minor had been defiled.
12. He stated that they asked the minor who stated that she had gone to get milk, when she found the accused who then pulled her to the house and defiled her. He testified that they took the minor to hospital and called the Sub-Chief and they took the minor to Iten Sub-County Hospital. He stated that he does not know who defiled the minor. Upon being cross-examined, he confirmed that he does not know the Appellant.
13. PW5 was Philemon Kitony. He testified that he is a Clinical Officer at Iten Hospital. He presented a report for the complainant who was a patient at Iten County Referral Hospital on 17th October 2023. He stated that on examination; panty anterior side was stained with substance, that the complainant looked in pain, that head to toe was normal, approximate age of injury predicted to be 72 hours, weapon -sharp penetration and he gave her an antibiotic, P2 and Prep.
14. He testified that on examining the vagina, labia majora was impaired at around 9 O'clock, whitish flared at 6 O'clock, hymen torn, the edges were visible and the vagina was open and that there was no discharge from the vagina. He stated that VDRC was normal, HIV negative, Pregnancy was negative and HVS was normal and it was his finding that there was recent vagina penetration consistent with defilement. He stated that he examined the patient, filled and signed the P3 Form on 17th October 2023. He then produced the P3 Form and lab test results. Upon being cross-examined, PW5 stated that the date of the alleged offence was on 16th October 2023.
15. PW6 was PC Rael Jemutai attached at the Iten Police Station, the investigating officer. She recalled that on 17th October 2023 at about 10:50 am, she was in the office when a teacher at [Particulars Withheld] Primary accompanied the complainant on allegation that the minor had been defiled by Emmanuel Kiplagat, a neighbour when she had gone to get milk. She testified that she escorted the complainant to Iten County Referral Hospital after issuing a P3 Form and that as per the doctor there was penetration.
16. She stated that she visited the scene where Emmanuel works. She testified that the minor narrated that on 16th in the evening, she went to collect milk and found the Appellant in the homestead, she entered the house when Emmanuel took her and placed her on the carpet and proceeded to defile her and that her siter came to look for her and Emmanuel told her that she had gone to the nearby centre to collect milk since had not found milk.
17. She stated that there were arresting officers and the area Chief who helped and they arrested the suspect. She testified that the minor identified the Appellant and that she was a student and 13 years old. She stated that the minor was born on 21st March 2010 and then produced a copy of her Birth Certificate. She stated that prior to the incident she did not know the Appellant and that she has no grudge with the Appellant.

Defence Evidence

18. At the close of the prosecution case, the Learned Trial Magistrate held that the Appellant had a case to answer. He was therefore placed on his defence He testified as (DW1) and gave sworn evidence. He



- testified that on 16th October 2023, he was at home at about 5:00 pm when the complainant came alone to collect milk. He stated that the complainant usually takes milk from his home, that he stepped out and told her that there was no milk since the cow had been dewormed and she left.
19. He testified that the complainant has been taking milk for 1 year. He stated that she did not enter the house and that she had a 1 litre yellow jerrycan. He testified that he was alone in the house. He stated that that he know that PW2 came to ask for her sister, she stood at the door and that he told him that his sister had left. He stated that she never entered the house and that she had a trouser and a jacket.
 20. He testified that he does not know where she went after leaving his house. He stated that the following day at around 11:00 was when officers came and arrested him when he was with his uncle Wesley. He told the Court that they live in the same village with the complainant and that they interact well as neighbours. Upon being cross-examined he told the Court that he knows the complainant very well and that he has known her for 2 years and that she has been taking milk from his home. He stated that he was alone when the complainant came.
 21. DW2 was Monica Koech. She testified that on 16/10/2023, she was in her house when a child came for milk. She stated that the child is called (N). She stated that she is the neighbour and that she was outside but she did not see her. She testified that the complainant had 1 litre container but she did not get milk and left. She stated that it was drizzling and she never came back. She further stated that in the morning at 5:00 am, she learnt that the Appellant had been arrested.

Submissions

22. Both parties filed their respective submissions on 17th September 2025.

The Appellant's Submissions

23. The Appellant begun by submitting on the issue of sentence. He noted that he was charged with offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act*. He submitted that as per the aforementioned sections, the prison term that one should serve upon conviction is 15 years. He argued that the sentence of 20 years imposed is excessive, harsh and unjustly unfair considering that he was a first offender with no criminal history.
24. He urged the Court to give him a second chance citing Article 50(2)(p) of *the Constitution* of Kenya. He also cited the case of Royton Muriungi v Republic HCCRA No.31 of 2019 [2020] eKLR and urged the Court to exercise its constitutional powers and review his custodial sentence to a less severe prison term. The Appellant cited Section 8(7) of the Sexual Offences with regard to his age at the time of the commissioning of the offence.
25. He argued that at the time when he committed the offence he was still a young boy in his puberty and adolescence stage and that this is a very crucial stage in a human life where peer pressure can easily drive one into such acts innocently without knowledge and understanding of the law. He urged the Court to be lenient and consider the fact that these were children in the adolescent stage who fell in love very unaware of the repercussions.
26. The Appellant maintained that the victim and him were in a relationship since in primary school and unfortunately they were not aware until their arrest that they were committing an offence more so, a serious offence. The Appellant submitted that the affair they were having was consensual and that the *Sexual Offences Act* tends to favour one gender against the other which amounts to discrimination and goes against the provision of Article 27 of *the Constitution* of Kenya.



27. In conclusion, the Appellant urge the Court to review his sentence of 20 years' imprisonment to a lesser term or even consider a non-custodial sentence.

The Respondent's Submissions

28. On her part, Prosecution Counsel, Ms. Racheal Mwangi begun by citing Section 8 of the [Sexual Offences Act](#) in regard to the definition of the offence of defilement. She however noted that Section 8(4) of the same Act stipulates that the penalty for defilement of children between the age of 16 - 17 years is 15 years' imprisonment. She pointed out that in the current case however, the complainant was 13 years when the offence occurred and that the correct charge should have therefore been Section 8(3) of the Sexual Offence Act.
29. She maintained that the Appellant herein did not suffer any prejudice since all the ingredients of defilement were proved beyond any reasonable doubt. She submitted that the same was typographical error which did not cause any prejudice to the Appellant. In that regard cited the Court of Appeal in the case of Tot vs. Republic (Criminal Appeal No.339 of 2018) [2025] KECA 1376 (KLR).
30. Counsel further submitted that although the age of the victim is central to proving defilement cases, what matters is whether age was demonstrated to the required standard. Counsel argued that once age is proved, the appropriate subsection applies. Counsel pointed out that Section 134 of the Criminal Procedure Code requires that charges contain sufficient particulars to enable the accused to know the offence alleged. Counsel submitted that in this case, the charges as read to the Appellant during plea taking were clear, that the particulars on the Charge Sheet were very clear that the Appellant defiled a child who was 13 years old.
31. Counsel argued that the charges and the particulars of the offence were read out to the Appellant who pleaded not guilty to the offence having understood the offence as charged. Counsel added the Appellant participated in hearing of the case and was able to cross-examine the witnesses in the case. Counsel in this regard relied on the case of Benard Kimani Gacheru vs. Republic [2002] eKLR and the case of Peter Ochieng vs. Republic [1985] eKLR.
32. Counsel urged that Section 382 of the Criminal Procedure Code provides that no finding or sentence shall be reversed merely for error in stating the offence or section unless the error has occasioned a failure of justice. Counsel reiterated that in the current appeal, the Appellant did suffer any injustice since all the ingredients of defilement were proved beyond any reasonable doubt. Counsel submitted that the ingredients of proving defilement were stated in the case of Charles Wamukoya Karani vs. Republic, Criminal Appeal No.72 of 2013 as age of the complainant, proof of penetration and positive identification of the assailant.
33. On issue of penetration, I note that, Counsel seems to have mixed the issues in the case with another file. Be as that as it may, Counsel submitted that the complainant testified that on 16th October 2023, she was at home when the Appellant went to her home, pushed her to the floor, removed her pants and inserted his penis into her vagina. Counsel further submitted that the complaint's evidence is corroborated by PW5, Dr. Philemon Kitony who examined the complainant. Counsel noted that the doctor testified that on the vagina, labia majora was impaired at 9 O'clock, hymen was also torn and edges were visible. He stated that the vagina was open and that he opined that there was recent penetration.
34. Counsel observed that the Respondent in his submissions, does not dispute the fact that he had sex with the complaint, he however states that the sex was consensual. Counsel maintained that a child cannot give consent to have sexual intercourse with an adult. Counsel added that besides the doctor's



- report indicated that the penetration was recent and argued that this, therefore means that it was the first time the complainant was being defiled. Counsel urged prosecution proved beyond reasonable doubt that there was penetration.
35. On the issue of age, Counsel cited Section 2 of the *Children Act*, 2022 definition of the term “child”. Counsel submitted that a person under the age of 18 years cannot legally consent to sexual activity. Counsel submitted that the complainant testified that she was 13 years having been born on 21st March 2010. Counsel observed that the offence was committed on 17th October 2023 placing the complainant at 13 years at the time of the commission of the offence.
 36. Counsel added that her evidence was supported by the evidence of PW6, PC Rael Jemutai who produced the complainant’s birth certificate which clearly shows that the complainant was born on 21st March /2010 which leaves no doubt that the complainant’s age was 13 years. Counsel noted that the Appellant states in his submission that at the time of committing the offence, he was a small boy who fell in love unaware of the repercussions. Counsel however argued that the age gap between the Appellant who was an adult at the time of committing the offence and the complainant who was 13 years old was too wide. According to Counsel, the Appellant was in a better position to make informed decisions since he was an adult.
 37. Counsel contended that this was not a case of Romeo and Juliet between two teenagers. Counsel further argued that in the trial Court proceedings , the Appellant did not raise the issue of being in a relationship with the complainant and thus the same is an afterthought meant to mislead the Court to defeat justice. Counsel urged that the age of the complainant was proved beyond any reasonable doubt.
 38. On the issue of identification, Counsel submitted that the complainant herein positively identified the Appellant as the person who defiled her. Counsel argued that the Appellant was not a stranger to the complainant and that from the evidence on record, the complainant testified that the Appellant was living at her neighbour’s place. Counsel urged that the Appellant was therefore well known to the complainant. She relied on the case of *Wanjohi and another vs. Republic (1989) KLR*.
 39. Counsel further submitted that the evidence of PW1 was corroborated by the evidence of PW2 who stated that she saw PW1’s shoes outside the Appellant’s house. Counsel added that moreover the Appellant in his submissions does not dispute that he had sexual intercourse with the complainant. Counsel urged that the prosecution proved the case beyond reasonable doubt that as required by the law. Counsel reiterated that the typographical error in quoting Section 8(4) instead of Section 8(3) did not in any way prejudice the Appellant herein.
 40. Regarding the sentence, Counsel submitted that the sentence meted out by the trial Court was not harsh nor was it excessive. Counsel submitted that Section 8(3) of the *Sexual Offences Act* states if the child defiled is between the ages of 12 to 15 years, the offender is liable to imprisonment for term of not less than 20 years. Counsel urged that the learned Magistrate correctly sentenced the Appellant to 20 years’ imprisonment which is the minimum stipulated by the law. She relied on the holding in the case of *Bernard Kimani Gacheru v Republic [2002] eKLR (Supra)* and the case of *Joshua Gichuki Mwangi (2024) KLR*.
 41. Counsel further submitted that the Appellant’s sentence was not excessive and that the trial Court did not overlook any relevant material factor or take into account wrong material or act on the wrong principle. Counsel the Court not disturb the sentence as meted out by the trial Court. Counsel further urged that the Court should note that sexual offences against children have become rampant countrywide and should ensure that children who are vulnerable members of society are protected from all forms of abuse.



42. In conclusion, Counsel therefore submitted that the defect in the Charge sheet was a technical error curable under Section 382 of the Criminal Procedure Code. Counsel submitted that Appellant was not misled or prejudiced; he fully understood he facing a defilement charge concerning a complainant age 13 years. Counsel urged that the conviction was therefore safe and the sentence proper and that the Court should dismiss the appeal and uphold the judgment of the trial Court.

Determination

43. In determining this appeal, this court being a first appellate court is alive to and takes into account the principles laid down in the case of Okeno vs. Republic (1972) EA32 where the Court of Appeal for Eastern Africa stated that:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be subjected to a fresh and exhaustive examination (Pandya V R 1975) E.A. 336 and to the appellate Court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions (Shantilal M. Ruwala V. R [1957] E.A. 570. It is not the junction of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the Magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see (Peters V Sunday Post 1978) E.A. 424.”

44. The offence of defilement is rooted on three main ingredients and these are the age of the victim, penetration and the proper identification of the perpetrator. These ingredients are provided for under Section 8(1) of the Sexual Offences Act No. 3 of 2006 and must each be proven by the prosecution beyond any reasonable doubt in order to sustain a conviction - see George Opondo Olunga v Republic [2016] eKLR.
45. The Appellant in his grounds of appeal had impugned the finding of the trial court on both the conviction and sentence. However, in his submissions, he proceeded in a manner that led the court to conclude that he had since abandoned the appeal against conviction and was now proceeding with the appeal as against sentence only. This is because he therein urged the court to be lenient and consider the fact that at the time of the commission of the offence they were children in the adolescent stage who fell in love very unaware of the repercussions.
46. He proceeded to state that the victim and him were in a relationship since in primary school and unfortunately, they were not aware until their arrest that they were committing an offence more so, a serious offence. The Appellant submitted that the affair they were having was consensual and that the Sexual Offences Act tends to favour one gender against the other which amounts to discrimination and goes against the provision of Article 27 of the Constitution of Kenya.
47. This submission by the Appellant being an admission of guilt, the court need not spend precious and scarce judicial time on belabouring the Learned Magistrate’s finding on the guilt and subsequent conviction of the accused. In this regard, the court now hereby finds the appeal against conviction as having been abandoned by the Appellants and the same is marked as such. In the circumstances, the conviction by the Learned Trial Magistrate is accordingly upheld and the court will proceed to pronounce itself on the sentence only.
48. The first issue that the Appellant has raised with regard to the sentence is as follows; That he was charged under the Provisions of Section 8(1) as read with Section 8(4) of the Sexual Offences Act. That



Section 8(4) carries a minimum mandatory sentence of 15 years' imprisonment upon conviction. That upon conviction however, he was sentenced under Section 8(3) of the Act which carries a mandatory minimum sentence of 20 years' imprisonment. He submitted that the sentence of 20 years imposed is excessive, harsh and unjustly unfair considering that he was a first offender with no criminal history.

49. Having considered the submissions made by the Counsel for the State in response to this submission, the issue that the court needs to determine is whether this defect in the is prejudicial to the Appellant and consequently fatal to the prosecution case. Indeed, the Birth Certificate produced placed the complainant's age at 13 years, and so indeed the Appellant ought to have been charged under Section 8(1) as read with Section 8(3) of the Act.
50. The court notes that the trial court in its judgement, even as it sentenced the Appellant under the provisions of Section 8(3) of the Act, made no mention of this anomaly and proceeded to sentence as if the Appellant had been charged under Section 8(3) which informed her sentence of 20 years.
51. Section 382 of the Criminal Procedure Code provides that unless an error in the judgment has occasioned a failure of justice, the order or sentence of a court shall not be reversed. The Section provides as follows:

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.”

52. The Court of Appeal in *Peter Ngure Mwangi v Republic* [2014] eKLR held thus: -

“On the issue of a defective charge sheet, there are two limbs to it. The first one deals with the issue as to whether the charge sheet is indeed defective, whereas the second one deals with the issue as to whether even if a charge sheet is defective, that defect is curable or not.”

53. The Court of Appeal in *Benard Ombuna v Republic* [2019] eKLR also gave guidance on determining whether a defect in a charge is fatal as follows: -

“In a nutshell, the test of whether a charge sheet is fatally defective is substantive rather than formalistic. Of relevance is whether a defect on the charge sheet prejudiced the Appellant to the extent that he was not aware of or at least he was confused with respect to the nature of the charges preferred against him and as a result, he was not able to put up an appropriate defence.”

54. In the case of *Bernard Kimani Gacheru v Republic* [2002] eKLR the court emphasised on when an appellate court can interfere with the sentence of a trial court and it stated that:

“It is now settled Law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that



the trial Court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the appellate Court feels that the sentence is heavy and that the appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already states is shown to exist.”

55. I have considered the proceedings before the trial court. Of special significance is that even though the charge itself was framed as brought under Section 8(1) as read with Section 8(4), the particulars of the charge as per the charge sheet that were read out to the Appellant and to which he pleaded were very clear on the age of the complainant. The same was stated to be 13 years.
56. Having understood the offence as charged, the Appellant participated fully in the hearing of the case. The complainant’s birth certificate ascertaining the complainant’s true age was produced and he did not at all challenge it. The record shows that he did cross-examine all the witnesses and gave a sworn testimony in his defence. All these only go to show that he his trial was not compromised in any way by dint of the fact that the charge as framed was brought under a different section of the Act.
57. In considering this defect, it is my considered opinion that it is a defect of form rather than substance which defect did not prejudice the Appellant in any way. In this regard, I am in agreement with the submission by the Counsel for the State that although the age of the victim is central to proving defilement cases, what matters is whether the age of the victim was demonstrated to the required standard and that once age is proved, the appropriate section in sentencing applies.
58. As already established, the proper interpretation of the law indicates that the complainant was 13 years old at the time of the defilement. In the circumstances, and having also found that the defect was one of form that did not affect the substance of the charge the proper sentence was that provided for under Section 8(3) of the [Sexual Offences Act](#) and which the trial court duly passed. In this regard, I am satisfied that the Learned Trial Magistrate did not err in sentencing the Appellant under the correct provision of the [Sexual Offences Act](#).
59. On the second issue of whether the sentence of 20 Years’ imprisonment imposed was justified, firstly, and without going into much ado on the allegation of the supposed existence of a Romeo and Juliet type relationship between the Appellant and the complainant, the record on the charge sheet indicates the age of the Appellant at the time of the charge as an adult.
60. Secondly, the Appellant has not availed any documentation to buttress the assertion that he was a child at the time of the commission of the offence. Thirdly, the court notes that the issue was not at all raised by the Appellant throughout the trial. The long and short of the matter is that the court finds the same to be an afterthought and it is therefore dismissed.
61. Further, and again without belaboring this issue, the position in law is that the sentences prescribed under the [Sexual Offences Act](#) are mandatory. The provisions of Section 8(3) of the Act under which the Appellant was sentenced by dint of the age of the complainant provides for a minimum sentence of 20 years. The learned Trial Magistrate sentenced the Appellant to the minimum aspect of that sentence and in this regard, it is my finding that the said sentence is not excessive, harsh and unjustly unfair but is legal and correct and is therefore justified.
62. The above said, the court notes from the sentence meted out that as provided under Section 333(2) of the Criminal Procedure Code, the trial court did not take into consideration the period that the Appellant spent in remand custody in the said sentence. This being a mandatory provision of the law, the court notes that the plea was taken on 18th October 2023 and the Appellant was sentenced on 18th September 2024 and he was in remand throughout the trial. This is an aggregate period of 11 months.



The court now hereby directs that this period be computed in the Appellants sentence of 20 years imprisonment and it is so ordered.

63. The upshot of all my above findings then is that save for the court's finding on the provisions of Section 333(2) of the Criminal Procedure Code, the Appellant's appeal against conviction and sentence is devoid of merit and the same is therefore dismissed in its entirety and the trial court's conviction and sentence are accordingly upheld.

READ DATED AND SIGNED AT ITEN ON 5TH MARCH 2026

E. OMINDE

JUDGE

