Njoroge v Republic (Criminal Appeal E011 of 2024)
[2026] KEHC 2382 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2382 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CRIMINAL APPEAL E011 OF 2024

H NAMISI, J

FEBRUARY 27, 2026

BETWEEN

JOSEPH KARIUKI NJOROGE ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against conviction and sentence on judgement delivered on 5 October 2023 by Hon. R. N. Nganga (SRM) of Gatundu Law Courts in Criminal Case No. E017 of 2023)

JUDGMENT

1. The matter currently before the Court is an appeal arising from the Chief Magistrate's Court at Gatundu. The Appellant was arraigned before the trial court on 20 May 2022, facing a primary charge of Defilement of a Child 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 primary offence alleged that on 8 May 2022, at Gathage village in Gatundu South Sub-County within Kiambu County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of T.N.W., a child aged 11 years. Furthermore, the Appellant faced an alternative charge of committing an indecent act with a child, contrary to section 11(1) of the *Sexual Offences Act*. The Appellant entered a plea of not guilty to both counts, prompting the matter to proceed to a full trial.

3. During the trial, the prosecution called 4 witnesses to establish its case beyond a reasonable doubt. Upon the close of the prosecution's case, the trial court determined that a prima facie case had been established and placed the Appellant on his defence. The Appellant subsequently offered unsworn testimony and called two defence witnesses, both of whom were his sons. On 15 September 2023, the learned trial Magistrate delivered a judgment convicting the Appellant on the primary count of

defilement. Subsequently, on 5 October 2023, the trial court sentenced the Appellant to serve 30 years of imprisonment.

4. Being deeply dissatisfied with both the conviction and the subsequent sentence, the Appellant lodged the present appeal before this Court. Concurrently, the Respondent filed a Notice of Enhancement, praying that this Court enhances the 30-year sentence to life imprisonment. The Respondent argues that a sentence of life imprisonment is the mandatory statutory minimum prescribed by section 8(2) of the *Sexual Offences Act* for the defilement of a child aged 11 years or less, rendering the 30-year sentence illegal.

The Prosecution's Case

5. The prosecution's case was anchored on the testimony of 4 key witnesses.

6. PW1, the complainant, aged 11 years, testified that on 8 May 2022, at around 1:00 p.m., while at the Gathage football pitch, the Appellant, a known neighbor, beckoned her. She followed him to his stone-built house with a blue door. Inside, he removed her clothes, placed her on his bed, and penetrated her genitalia with his. She stated this had occurred on prior occasions and that the Appellant threatened to kill her if she disclosed the acts.

7. PW2, Mary Wambui Mwangi, is grandmother to PW1. She testified that the minor lived with her prior to the incident. She noted that the minor had previously claimed to spend nights at neighbors' houses. On 15 May 2022, after observing physical anomalies, a foul smell, and persistently questioning the minor, the minor disclosed the defilement. PW2 subsequently reported the matter to the police and took the minor to the hospital.

8. PW3, PC Fatuma Hussein, the Investigating Officer, received the official report on 15 May 2022. She visited the Appellant's house and took the minor to Gatundu Level 5 Hospital for examination and later filled out the P3 form. PW3 produced the minor's official Birth Certificate showing a birth date of 19 February 2011. She effected the arrest of the Appellant.

9. PW4, the Medical Officer, Examined PW1 at Gatundu Level 5 Hospital 10 days post-incident. He found no visible external genitalia injuries but noted a broken hymen. Urinalysis revealed the presence of pus cells, epithelial cells, and bacteria. No spermatozoa were detected due to the time lapse. PW4 concluded the findings were medically consistent with penetration.

The Defence

10. In rebuttal, the Appellant was placed on his defence and elected to give an unsworn statement denying the charges entirely. He raised the specific defence of alibi, asserting that he was neither at home nor at the playing field on the material date of the offence. He alleged that the charges were a malicious fabrication stemming from an undisclosed grudge and noted that the minor's mother had failed to report the matter to the local chief prior to involving the police.

11. To bolster his defence, the Appellant called two witnesses, both of whom were his biological sons. They testified that they resided in the same house with their father and that he never committed the alleged offence. However, their testimonies primarily focused on the circumstances surrounding the Appellant's subsequent arrest, rather than providing an airtight alibi for his specific whereabouts at 1:00 p.m. on 8 May 2022.

The Appeal

12. The jurisdiction of this Court is invoked under section 347 of the Criminal Procedure Code. As a first appellate court, the mandate is not merely to review the lower court's decision for superficial errors of law, but to conduct an exhaustive, independent rehearing of the matter based on the recorded proceedings. The Court is obligated to subject the entire evidentiary matrix adduced at trial to a fresh, independent, and comprehensive evaluation, and to draw its own conclusions regarding the guilt or innocence of the Appellant.

13. This foundational principle is deeply anchored in the authoritative jurisprudential threshold established in the locus classicus of Okeno v Republic EA 32. In Okeno, the defunct Court of Appeal for East Africa definitively held that a first appellate court must independently weigh the evidence and make its own findings, always bearing in mind that it did not have the distinct advantage of observing the demeanour of the witnesses firsthand. The appellate court will not substitute its own opinion for that of the trial court unless the factual findings of the trial court are demonstrated to be inherently unsound, based on a misdirection of the law, or wholly contrary to the weight of the evidence on record.

14. Guided by this strict evidentiary standard, the Court has meticulously scrutinized the trial court record, the petition of appeal, the written submissions filed by both the Appellant and the Respondent, and the relevant statutory and case law frameworks.

15. The Appellant's Petition of Appeal and subsequent written submissions raise 6 substantive grounds, which heavily contest both the factual findings and the legal conclusions of the trial court. The Appellant argues that the medical examination was delayed by 10 days, yielding inconclusive results—specifically, the absence of spermatozoa, DNA evidence, and visible external injuries—rendering the trial court's finding of penetration unsafe and legally defective.

16. The Appellant contends that the delay in reporting the incident, coupled with alleged inconsistencies in the complainant's disclosure to various parties, casts fatal doubt on her overall credibility.

17. The Appellant alleges that material contradictions exist between the testimonies of the prosecution witnesses (specifically PW1 and PW2) regarding the time, place, and nature of the incident, which weaken the prosecution's case. The Appellant asserts that his alibi was highly plausible and that the trial court ignored it, improperly shifting the burden of proof to the defence.

18. The Appellant argues that the trial court engaged in selective judgment, heavily relying on prosecution evidence while ignoring discrepancies and evidence favourable to the defence.

19. The Appellant submits that the 30-year sentence is manifestly excessive, disproportionate, and fails to consider his status as a first-time offender and the sole caregiver to his dependents.

20. Conversely, the Respondent's written submissions vehemently maintain that the prosecution proved its case beyond any reasonable doubt. The Respondent asserts that the essential ingredients of defilement—penetration, the age of the minor, and the identity of the perpetrator—were conclusively established by the evidence on record. Relying on the precedent of Michael Saa Wambua & Another v Republic, the Respondent argues that minor discrepancies in witness testimonies do not vitiate an otherwise solidly proven case. Crucially, the Respondent cross-appeals via a Notice of Enhancement, seeking to elevate the sentence to life imprisonment, citing the mandatory, non-derogable strictures of section 8(2) of the *Sexual Offences Act*.

21. Upon a holistic re-evaluation of the trial record, the grounds of appeal, and the rival submissions, the following critical issues crystallize for the Court's determination:

a. Whether the age of the complainant was proved to the required statutory standard;

b. Whether the fact of penetration was established beyond reasonable doubt, and the legal effect of the delayed medical examination;

c. Whether the Appellant was positively identified as the perpetrator in law and fact;

d. Whether the delay in reporting the offence and the alleged contradictions in witness testimonies were sufficiently explained or legally fatal;

e. Whether the Appellant's defence of alibi was properly considered and lawfully dislodged by the prosecution;

f. Whether the sentence of 30 years imprisonment was lawful, and the consequential effect of the Respondent's Notice of Enhancement in light of recent Supreme Court jurisprudence.

Proof of Age of the Complainant

22. Under section 8 of the *Sexual Offences Act*, the age of the victim is the primary determinant of the specific charge levied and the corresponding statutory penalty exacted upon conviction. It is an essential ingredient of the offence that the prosecution must prove beyond reasonable doubt. The law treats the defilement of children of varying ages with escalating severity, making the precise ascertainment of age a strict legal necessity.

23. The trial record unequivocally reflects that the prosecution introduced the complainant's official Birth Certificate into evidence through PW3, the Investigating Officer. The certificate explicitly and officially recorded the complainant's date of birth as 19 February 2011. Given that the primary offence occurred on 8 May 2022, simple arithmetic confirms that the complainant was exactly eleven years and two months old at the material time.

24. The Appellant did not dispute the authenticity, origin, or the contents of the Birth Certificate during the trial proceedings, nor was PW3 cross-examined on its validity. The law is exceedingly well-settled that documentary evidence in the form of a legally issued Birth Certificate acts as conclusive proof of age in sexual offence proceedings, fulfilling the strict requirements laid out in Kenyan jurisprudence. The trial court's finding that the complainant was 11 years old at the time of the offence is, therefore, factually unassailable and legally sound. This Court affirms the finding without hesitation.

Proof of Penetration and the Weight of Medical Evidence

25. The Appellant vigorously contests the trial court's finding of penetration, mounting a sophisticated, multi-pronged attack on the medical evidence adduced by PW4. The Appellant submits that the 10-day delay in conducting the medical examination fundamentally compromised the findings. The Appellant points to the absence of spermatozoa, the lack of DNA evidence, and the absence of fresh, visible external injuries to argue that the medical report was inconclusive. Citing cases such as Samson Muthee v Republic eKLR and Francis Onamu v Uganda UGSC 1, the Appellant argues that medical evidence alone, especially when inconclusive or lacking forensic certainty, cannot safely sustain a conviction.

26. To properly address this ground, the Court must meticulously examine the statutory definition of penetration. Section 2 of the *Sexual Offences Act* defines penetration as partial or complete insertion of the genital organs of a person into the organs of another person. The law does not strictly require the occurrence of ejaculation, the deposit of seminal fluid, or the infliction of severe tissue damage to

constitute penetration; the mere act of insertion, however slight or momentary, perfectly satisfies the legal threshold.

27. The evidentiary burden regarding penetration in sexual offences involving minors requires careful judicial navigation. Section 124 of the *Evidence Act* expressly provides a critical caveat regarding corroboration: where the only evidence in a criminal case involving a sexual offence is that of the alleged victim, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth. While corroboration of a child's testimony is highly desirable as a matter of judicial prudence and best practice, its absolute absence is not automatically fatal to a prosecution's case if the child witness is found to be exceptionally credible, coherent, and truthful.

28. In the present case, however, the Court is not dealing with uncorroborated testimony. The primary, direct evidence of penetration came from PW1 herself. During the trial, after a thorough voire dire examination establishing her understanding of the duty to tell the truth, PW1 delivered a coherent, sequential, and unwavering account of the assault. She explicitly and graphically testified that the Appellant removed her clothes, placed her on his bed, and inserted his genitalia into her genitalia. The trial Magistrate meticulously observed her demeanour and recorded findings that she was confident, coherent, composed, and intimately versed in the traumatic events that transpired.

29. The Appellant's assertion that the medical evidence was inconclusive misapprehends the forensic reality of delayed clinical examinations. PW4, Dr. Njema, testified that she examined the minor 10 days post-incident. While the doctor found no fresh external lacerations, she critically noted a broken hymen. Significantly, the urinalysis conducted on the minor revealed the presence of pus cells, epithelial cells, and bacteria.

30. In the realm of medical and forensic pathology, the presence of pus cells (leukocytes) and abnormal bacteria in the genitourinary tract of a prepubescent female is a potent, recognized indicator of a severe inflammatory response. This response is frequently the direct result of an infection caused by the traumatic introduction of foreign pathogens, which is heavily corroborative of external trauma or unauthorized penile penetration. The shedding of epithelial cells further points to mechanical friction against the mucosal lining of the vagina, perfectly consistent with the act of defilement.

31. The absence of spermatozoa after a 10-day lapse is not anomalous; it is biologically expected. Forensic science dictates that spermatozoa typically degrade, lose motility, and are entirely expelled or washed away from the vaginal canal within 72 to 96 hours post-coitus. The lack of DNA evidence or seminal fluid in this specific context is a natural consequence of the passage of time, not affirmative proof of the Appellant's innocence. Therefore, the medical evidence was far from inconclusive; rather, it provided strong, objective, and circumstantial corroboration of PW1's direct oral testimony. The trial court correctly synthesized PW1's credible oral evidence with PW4's clinical findings to reach the inescapable conclusion that penetration was proved beyond reasonable doubt. This Court finds no basis whatsoever to interfere with that sound, evidence-based conclusion.

Inconsistencies, Contradictions, and Delayed Reporting

32. The Appellant forcefully argues that the complainant’s initial report was highly doubtful, plagued by an unexplained 10-day delay, and marked by material inconsistencies across the testimonies of the prosecution witnesses, specifically PW1 and PW2.

33. The jurisprudence surrounding delayed reporting in cases of sexual violence—particularly those involving vulnerable minors and known perpetrators such as family members, authority figures, or trusted neighbours—has evolved significantly in recent years. Delay in reporting a sexual offence is

no longer viewed through an archaic lens as an automatic presumption of fabrication or consent. The psychological paralysis, profound shame, trauma, and paralysing fear of reprisal that afflict child victims of sexual violence are now well-documented and judicially recognized.

34. In the highly persuasive case of SNT v Republic [2013] eKLR, the Court of Appeal meticulously acknowledged the complex socio-psychological dynamics that actively prevent immediate reporting, particularly where the perpetrator holds a position of power or proximity to the victim, or where explicit threats are issued to secure silence. Furthermore, courts have consistently held that a threat to kill or harm issued by the perpetrator provides a highly plausible, medically sound, and legally acceptable explanation for delayed reporting in defilement cases.

35. The trial record explicitly demonstrates that the Appellant threatened to kill PW1 if she ever dared to disclose the acts of defilement to anyone. For an 11-year-old child, a credible death threat from an adult neighbour represents an overwhelmingly coercive and terrifying force. The 10-day silence was not indicative of falsehood; it was the direct, intended result of the Appellant's own severe intimidation tactics. The silence was only broken when PW2, the grandmother), noticed a foul smell emanating from the minor—a fact perfectly corroborated medically by the infection causing the pus cells—and persistently questioned the child until the traumatic truth was revealed.

36. Regarding the alleged contradictions, the Appellant specifically contends that PW2's testimony—that the minor had previously claimed to spend nights at neighbours' houses—contradicts the prosecution's central narrative. However, a meticulous review of the evidence indicates that this fact does not contradict the minor's account; rather, it darkens the context. It underscores the minor's extreme vulnerability and highlights the Appellant's proximity and ongoing opportunity to systematically groom, isolate, and repeatedly assault her over an extended period.

37. As the Court of Appeal aptly noted in Michael Saa Wambua & Another v Republic [2017] eKLR, minor discrepancies or inconsistencies in prosecution evidence do not per se vitiate the entire case unless they go to the absolute root of the matter and destroy the fabric of the prosecution's overarching narrative. The core res gestae of this case—that the Appellant lured the minor into his house and defiled her—remained completely unshaken despite rigorous cross-examination. The Court finds that the delay in reporting was adequately and legally explained by the Appellant's threat to kill, and any perceived minor inconsistencies in the familial reporting chain did not occasion a miscarriage of justice.

Visual Identification vs Recognition

38. The Appellant challenges his identification, arguing that the prosecution failed to place him conclusively at the scene of the crime and that the trial court erred in relying on the uncorroborated identification by the minor. This argument necessitates a deep examination of the law regarding visual identification in criminal proceedings.

39. It is a trite and universally accepted principle of evidence that visual identification in criminal cases must be examined with the greatest care, particularly when the conditions favouring a correct identification are difficult, such as poor lighting, fleeting glances, or chaotic circumstances. However, Kenyan jurisprudence draws a sharp, critical, and legally significant distinction between the identification of a complete stranger and the recognition of a known person.

40. In the landmark case of Anjononi v Republic KLR 59, the Court of Appeal definitively established that recognition is generally far more reliable than the identification of a stranger. Recognition draws upon the witness's prior, established familiarity with the accused's physical features, voice, mannerisms, and gait. This foundational principle has been consistently reaffirmed in a plethora of subsequent cases. For instance, in Maitanyi v Republic [1986] KLR 198, the Court of Appeal emphasized the acute need for

watertight evidence in stranger identification under poor lighting, but maintained that recognition by a familiar party carries inherently stronger probative value. Similarly, in Pius Isaya Manjero v Republic [2010] eKLR, the Court reiterated the necessity for safe and positive recognition when placing an accused at the scene.

41. In the matter at hand, this was strictly and unequivocally a case of recognition, not stranger identification. PW1 testified that the Appellant was her immediate neighbour and was intimately well known to her by his name. The incident on 8 May 2022 occurred in broad daylight, at approximately 1:00 p.m. The parties were in extremely close physical proximity inside the Appellant's house.

42. Furthermore, PW1 provided highly specific, corroborating details regarding the locus in quo—the interior of the Appellant's house. She accurately described it as a stone-built house featuring a blue door, a white carpet, and wooden seats. Such intimate architectural and interior details cannot be arbitrarily conjured by an eleven-year-old child unless she had physically been inside the specific premises.

43. The Appellant was not a stranger fleetingly observed in the dark from a distance. He was a highly familiar neighbour recognized in broad daylight during a prolonged, traumatic interaction. The trial court's finding that the Appellant was positively and safely identified through visual recognition is legally sound, heavily buttressed by the child's detailed description of the crime scene, and empirically supported by the record. The Appellant's argument on mistaken identity is entirely devoid of merit.

The Defence of Alibi

44. The Appellant forcefully contends that the trial court failed to give due consideration to his statutory defence of alibi. He claimed during his unsworn testimony that he was neither at home nor at the football field on the material date, a claim he alleges was fully supported by the testimony of his 2 sons acting as defence witnesses.

45. The legal framework governing the defence of alibi in Kenya is well-established and deeply rooted in the presumption of innocence. When an accused person raises an alibi, he does not assume the legal or evidentiary burden of proving it. The burden of proof remains squarely and permanently on the prosecution to place the accused at the scene of the crime and to disprove the alibi beyond a reasonable doubt. This standard was unequivocally articulated by the Court of Appeal in the case of Mutonyi v Republic KLR 203. In Mutonyi, the Court held that an accused putting forward an alibi does not bear the burden of proving that answer; the prosecution must destroy the alibi by adducing cogent, positive evidence establishing the accused's presence at the scene. This principle was further affirmed in Kipngeno arap Victor v Republic [2020] eKLR, emphasizing that the failure to formally rebut an alibi can be fatal to the prosecution if the primary evidence is weak.

46. However, the law is equally clear that the prosecution is not required to lead specific, separate evidence dedicated solely to rebutting the alibi if the primary evidence of identification is already sufficiently strong. Where the prosecution adduces watertight, unshakeable evidence positively identifying the accused at the scene of the crime, the alibi is inherently dislodged and logically collapses.

47. In meticulously evaluating the Appellant's alibi, the trial court correctly noted that the testimony of his two sons (DW1 and DW2) primarily cantered on the date and manner of his subsequent arrest by the Police. Their evidence lacked the temporal specificity required to place the Appellant elsewhere during the exact window of the offence—namely, 1:00 p.m. on 8 May 2022. They testified that they were students and were not always at home, which inherently leaves open the opportunity for the Appellant to have been alone at the premises.

48. More importantly, the formidable evidence of recognition by PW1, who interacted with the Appellant intimately and could vividly describe the locked interior of his house, completely shattered the foundation of the alibi. The prosecution successfully discharged its heavy burden of placing the Appellant precisely at the scene of the crime. The trial court correctly rejected the alibi as a hollow, manufactured afterthought incapable of neutralizing the overwhelming weight of the prosecution's positive evidence. The evaluation of the alibi by the trial court was legally flawless.

Sentencing

49. The final, and perhaps most legally complex, issue revolves around Ground 6 of the Petition of Appeal, that the 30-year sentence was harsh, excessive, and disproportionate, juxtaposed against the Respondent's formal Notice of Enhancement, seeking an upgrade of the sentence to life imprisonment.

50. The trial court, upon convicting the Appellant on 15 September 2023, subsequently sentenced him to 30 years imprisonment on 5 October 2023. The Appellant vehemently argues that as a first-time offender, the sole breadwinner, and the primary caregiver for a mentally ill child, this sentence violates the constitutional principle of proportionality and entirely ignores critical mitigating factors.

51. Conversely, the Respondent argues that the 30-year sentence is, in fact, an illegal sentence because the victim was definitively proved to be 11 years old. Section 8(2) of the *Sexual Offences Act* explicitly and unambiguously 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.

52. To resolve this stark legal dichotomy, the Court must engage deeply with the recent and seismic shifts in Kenyan sentencing jurisprudence. For a significant period following the promulgation of *the Constitution* 2010, there existed profound ambiguity in the lower courts and the Court of Appeal regarding whether mandatory minimum sentences prescribed by statutes like the *Sexual Offences Act* were constitutional. This confusion largely stemmed from a broad, systemic misapplication of the Supreme Court's landmark decision in Muruatetu & Another v Republic KESC 2 (KLR), which declared the mandatory death sentence for murder unconstitutional on the grounds that it deprived judges of critical sentencing discretion and denied convicts the right to mitigation. Relying expansively on Muruatetu, various appellate panels had begun striking down mandatory life sentences under the *Sexual Offences Act*, substituting them with determinate terms based on judicial discretion.

53. However, in 2024, the Supreme Court issued a definitive trilogy of authoritative judgments that conclusively settled the law, forcefully halting the judicial trend of diluting statutory minimums for sexual offences.

54. First, in the watershed case of Republic v Joshua Gichuki Mwangi KESC 34, the Supreme Court overturned a Court of Appeal decision that had declared mandatory minimum sentences under the *Sexual Offences Act* unconstitutional. The Supreme Court explicitly clarified that the Muruatetu decision was strictly confined to the mandatory death penalty for murder under Section 204 of the Penal Code. The Supreme Court held that while sentencing involves the exercise of judicial discretion, it is the exclusive constitutional prerogative of Parliament, acting in the public interest, to set the parameters and limits of sentencing for specific crimes. The Court reaffirmed that the minimum and mandatory sentences within the *Sexual Offences Act* are entirely constitutional, reflect the gravity of sexual violence, and do not violate the doctrine of separation of powers.

55. Second, the Supreme Court reinforced this unyielding stance in Julius Kitsao Manyeso v Republic KESC 35 (Petition E013 of 2024). In that specific case, the Court of Appeal had substituted a mandatory life sentence for defilement with a forty-year term, arguing that indeterminate life imprisonment was unconstitutional as it denied the convict the right to hope. The Supreme Court swiftly struck down this reasoning, ruling that the Court of Appeal acted ultra vires by usurping legislative authority to define sentences. The Supreme Court fully reinstated the life imprisonment sentence, asserting that courts absolutely cannot substitute mandatory sentences prescribed by Parliament.

56. Third, in Evans Nyamari Ayako v Republic KESC 36 (Petition E002 of 2024), the Supreme Court dealt with an appellant convicted under section 8(2) of the *Sexual Offences Act*. The Court of Appeal had reduced his life sentence to 30 years. The Supreme Court set aside the Court of Appeal's judgment, expressly holding that "the Respondent shall serve life imprisonment as sentenced by the Magistrate's Court," explicitly rejecting the notion that courts can artificially commute a statutory life sentence to thirty years.

57. Guided by Article 163(7) of *the Constitution*, this Court is absolutely bound by the decisions of the Supreme Court. The jurisprudential edict from the apex court is unmistakable: the mandatory sentences within the *Sexual Offences Act* are constitutional, valid, and must be strictly enforced without unauthorized judicial dilution.

58. Applying this binding, conclusive precedent to the present case, the trial Magistrate committed a grave error of law by imposing a 30year sentence. Because the complainant was definitively proved to be 11 years old via her Birth Certificate, the operation of section 8(2) of the *Sexual Offences Act* was triggered automatically and unavoidably. The statute does not offer a discretionary range; it employs the mandatory, non-derogable imperative "shall... be sentenced to imprisonment for life". The trial Magistrate possessed no legal discretion or jurisdiction to downwardly depart from this statutory edict to impose a 30-year term. Consequently, the 30-year sentence handed down on 5October 2023 was an illegal sentence ab initio.

59. The Appellant's extensive pleas in mitigation—his status as a first-time offender, his lack of prior convictions, and his role as a sole caregiver—cannot, under any circumstances, override a mandatory statutory penalty set by the legislature. Where Parliament has legislated a fixed, mandatory penalty, judicial discretion in mitigation is entirely extinguished by operation of law.

60. This leads directly to the resolution of the Respondent's Notice of Enhancement. Section 354(3) of the Criminal Procedure Code empowers the High Court, in its appellate jurisdiction, to alter a finding, maintain a sentence, or increase or reduce a sentence as the justice of the case demands. Section 364(1)(a) further entrenches the High Court's supervisory and revisionary power to enhance a sentence to ensure absolute conformity with the law.

61. While it is procedurally prudent and constitutionally fair for the Respondent to file a formal Notice of Enhancement to afford the Appellant a right to be heard on the matter, the Court of Appeal in SNT v Republic eKLR established that an appellate court can, and indeed must, suo motu correct an illegal sentence even without formal notice. In SNT, a 14-year sentence for incest was enhanced to life imprisonment on appeal solely because the law mandated life. The Court of Appeal definitively held:

> " While it is prudent, and fair, to warn the appellant and give him a notice of enhancement, we are of the view that such a notice is not required in respect of an illegal sentence... Illegality

of a sentence is a matter of law and therefore, the learned Judge was correct in enhancing the sentence to life imprisonment".

62. In the instant appeal, the procedural requirements were fully met as the Respondent formally filed and served a Notice of Enhancement, affording the Appellant absolute due process and an opportunity to respond. Given that the 30-year sentence is irreconcilably offensive to the strict provisions of section 8(2) of the *Sexual Offences Act*, and absolutely bound by the Supreme Court's unyielding directives in Joshua Gichuki Mwangi, Kitsao Manyeso, and Evans Nyamari Ayako, this Court has a non-derogable, mandatory duty to correct the illegality. The sentence cannot stand; it must be enhanced to align perfectly with the supreme law of the land and the explicit legislative will of Parliament.

63. In the premises, this Court makes the following final orders:

    i. The Appellant's appeal lacks merit entirely and is hereby dismissed.

    ii. The Respondent's Notice of Enhancement is found to be merited in law and is hereby allowed.

    iii. The illegal sentence of 30 years imprisonment imposed by the trial court on the 5 October 2023 is hereby set aside. In substitution thereof, and in strict, mandatory compliance with section 8(2) of the *Sexual Offences Act*, the Appellant, Joseph Kariuki Njoroge, is hereby sentenced to life imprisonment.

    iv. The sentence shall run from the date of his original conviction by the trial court.

DATED AND DELIVERED AT THIKA THIS 27 DAY OF FEBRUARY 2026.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Appellant: Present at Kamiti Maximum Prison

For the Respondent: Ms Torosi

Court Assistant: Lucy Mwangi