



**Kiplang'at v Republic (Criminal Appeal 40 of 2020)  
[2025] KECA 197 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KECA 197 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 40 OF 2020  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
FEBRUARY 7, 2025**

**BETWEEN**

**ISAIAH KIPLANG'AT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgement of the High Court of Kenya at  
Bungoma (Ali Aroni, J.) dated 27th July, 2017 in HCCRA No. 136 of 2015)*

**JUDGMENT**

1. The appellant, Isaiah Kiplang'at, was the accused person in the trial before the Chief's Magistrate's Court at Bungoma in Criminal Case No. 2740 of 2015. He was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the *Sexual Offences Act*, No. 3 of 2006. The particulars of the offence were that on the 18<sup>th</sup> day of May, 2015, within Bungoma County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of M.W.T., a child aged 17 years.
2. The appellant also faced 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 victim, date and place of the alternative count were the same as that in the main charge.
3. The appellant pleaded guilty to the main charge, and the learned trial magistrate convicted and sentenced him to the statutory minimum sentence of fifteen (15) years imprisonment.
4. The appellant was aggrieved by the decision of the lower court and filed an appeal against the sentence before the High Court.
5. The High Court (Ali Aroni, J.) as she then was, dismissed the appeal and upheld the sentence in a judgment dated 27<sup>th</sup> July, 2017.



6. The appellant was again dissatisfied with the decision of the High Court and has lodged the present appeal. Acting pro se, he has raised eight (8) grounds in his Memorandum of Appeal, all of which impugned his sentence. Before us, the appellant urges us to reduce his sentence owing to the fact that he was only eighteen years old at the time of commission of the offence, and the complainant was 17; that they were in a relationship, and he was ignorant about the law; and that he was remorseful and greatly regretted the offence. He further says that he is now fully rehabilitated and reformed - and to prove it, he annexed a certificate in theology he has earned while in prison. He reminded us that he was a first offender at the time of the offence. He pleaded for leniency.
7. Ms. Mwaniki, prosecuting counsel, opposed the appeal on sentence and submitted that section 8(4) of the *Sexual Offences Act*, under which the appellant was charged, provides that a person who defiles a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term not less than fifteen years. Counsel cited the Supreme Court's decision in Republic vs. Joshua Gichuki Mwangi (Petition E018 of 2023) [2024] KESC 34 (KLR), which upheld the constitutionality of the penalty sections of the *Sexual Offences Act*. Based on the foregoing, counsel urged that the sentence imposed by the trial court and upheld by the High Court was within the law and ought not to be interfered with.
8. We have considered the appeal and the grounds urged in support thereof, and the rival submissions and authorities cited by both parties.
9. While considering the appellant's appeal against sentence, we are mindful of our remit as a second appeal court. Our jurisdiction is limited by dint of Section 361(a) of the *Criminal Procedure Code* to deal with matters of law only and not to delve into matters of fact which have been dealt with by the trial court and re-evaluated by the first appellate court. For purposes of this section, severity of sentence is defined as a matter of fact. See Samuel Warui Karimi vs. Republic [2016] eKLR.
10. As the appeal here is limited to sentence, we can only intervene if the sentence imposed was unlawful or if it was manifestly excessive; disproportionately low; or if there is evidence that the learned magistrate took into consideration extraneous factors or failed to take into consideration relevant factors.
11. In the present case, the learned magistrate conducted sentence hearing after entering a guilty plea. She then indicated that she had to impose the sentence of fifteen (15) years imprisonment because it was the only one stipulated by the law.
12. We note the contrempts the learned magistrate felt in imposing a fifteen-year imprisonment sentence in the circumstances of this case. We feel it too. Here was a young man of extreme youth at eighteen (18) years old. He was in a romantic (albeit misguided) relationship with the complainant, who was only a year younger. Other than the brightline age of consent dictated by statute, the appellant and the complainant were practically age-mates. Here, there was no force, indecent luring or taking advantage of a much younger girl – just two young people in (misguided) love. The appellant pleaded guilty at the earliest instance hoping that his good faith would be credited. He was a first offender. He was remorseful. There is demonstrated evidence that he has reformed and has capacity to be rehabilitated. Yet, the *Sexual Offences Act* comprehends no such extenuating considerations: it provides for categorical minimum sentences – in this case, imprisonment for fifteen years.
13. Were it open to us, we would most definitely have considered the minimum sentence imposed here as excessive. Until recently, this Court had developed a jurisprudence that permitted the deft consideration of such circumstances and then fashioning an appropriate sentence. That jurisprudence was brought to a definitive end by the Supreme Court in its decision in the Joshua Gichuki Mwangi Case (supra). There, the Supreme Court held, with finality, that the mandatory minimum sentences



imposed in the *Sexual Offences Act* are not unconstitutional; and that trial courts have no discretion to go below the statutory minimum sentences in sexual offences.

14. The apex Court held:

“ 56. Mandatory sentences leave the trial court with absolutely no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentences. What is prescribed is the least severe sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence. In fact, to use the words mandatory and minimum together convolutes the express different definitions given to each of the two words. Although, the term ‘mandatory minimum’ can be found used in different jurisdictions, including the United States, and in a number of academic articles, it is not applicable as a legally recognized term in Kenya. In this country, a mandatory sentence and minimum sentence can neither be used interchangeably nor in similar circumstances as they refer to two very different set of meanings and circumstances.

57. In the Muruatetu case, this court solely considered the mandatory sentence of death under Section 204 of the *Penal Code* as it is applied to murder cases; it did not address minimum sentences at all. Therefore, mandatory sentences that apply for example to capital offences, are vastly different from minimum sentences such as those found in the *Sexual Offences Act*, and the *Penal Code*. Often in crafting different sentencing for criminal offences, the drafters of the law in the Legislature, take into consideration a number of issues including deterrence of crime, enhancing public safety, sequestering of dangerous offenders, and eliminating unjustifiable sentencing disparities.”

15. Whatever our views, we are bound by this decision of the Supreme Court by dint of the doctrine of stare decisis which is provided for under Article 163(7) of *the Constitution*. Yet, we are moved by our collective conscience to strongly point out the oppressive unfairness this strident and categorical jurisprudence on minimum sentences occasionally visits on individuals especially in Romeo and Juliet cases such as the one before us.

16. The absolutist approach taken by the Joshua Gichuki Mwangi Case (supra), we are afraid, turns hormonal young men into scapegoats rather than protect young girls impacted by sexual violence. This case serves as a poster child calling for a re- evaluation of that approach. There simply can be no moral justification for imprisoning a growing young man, only eighteen years of age, for fifteen years for having non-coercive and consensual sexual relations with his girlfriend, only a year younger. If the aim is to protect children from sexual exploitation, sexual violence and sexual abuse, this legally-aided scapegoating does little to serve that purpose. The result we are forced by the Joshua Gichuki Mwangi Case (supra) to come to in this appeal is especially painful in this day and age when most countries are going in the opposite direction out of the realization that the absolutist approach is unnecessarily harsh and oppressive. Many countries have now enacted Romeo and Juliet Laws - age-gap provision laws which create brackets for which consensual sexual activity between parties within the same age-bracket is decriminalized or is subject to less severe penalties. This nuanced approach ensures that laws are crafted to suit individual social contexts and eliminate strict liability for consensual sexual relations between same age-bracket individuals within defined age differentials. In Kenya, in the absence of such Romeo and Juliet Laws, only sentencing discretion as a judicial function could take its place in



mitigating the harshness of statutory minimum sentences. Yet, it is this judicial function and discretion that the Joshua Gichuki Mwangi Case (supra) took away. The result is the kind of unfairness wrought on young men like Isaiah Kiplangat that we are forced to enunciate today. We can only hope for a re-evaluation of this absolutist approach.

17. Yet, we must, without relish, dismiss the appeal herein in its entirety. The only consolation we can offer the appellant is one offered by Section 333(2) of the *Criminal Procedure Code*. We noted that that the appellant was arrested on July 16, 2015, and was arraigned in court the following day. By dint of Section 333(2) of the *Criminal Procedure Code*, his imprisonment term shall be computed to begin running from that date.
18. Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

