



**Oloo v Republic (Criminal Appeal 112 of 2016)
[2025] KECA 1404 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1404 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 112 OF 2016
MSA MAKHANDIA, HA OMONDI & P NYAMWEYA, JJA
JULY 31, 2025**

BETWEEN

CHARLES MOKOYA OLOO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgment of the High Court of Kenya at Kisumu
(Chemitei, J) dated 16th December, 2014 in HCCRC No. 11 of 2014)*

JUDGMENT

1. Charles Mokoya Oloo, [“the appellant”], was arraigned before the Principal Magistrate’s Court at Ukwala and charged with offence of defilement contrary to Section 8[1] as read with Section 8[3] of the *Sexual Offences Act*. The case details indicate that on the night of 25th June, 2011, at Tinigare West Sub-location, Ugunja District, of the then Nyanza Province, the appellant intentionally caused his penis to penetrate the vagina of JA, [full name withheld] a 15-year- old child. In addition, he faced an alternative charge of committing an indecent act with a child, contrary to Section 11[1] of the same Act, but since the appellant was neither convicted nor sentenced on this count, we need not set out the particulars.
2. The appellant denied the charges, and his trial ensued. The prosecution presented four witnesses in a bid to prove its case against the appellant. At the conclusion thereof the trial Magistrate determined that a prima facie case had been established, and placed the appellant on his defence. He elected to give a sworn statement of defence. At the end the trial court found him guilty and sentenced him to 20 years imprisonment.
3. Unhappy with the verdict, the appellant preferred an appeal to the High Court at Kisumu arguing that PW1 and PW2 were sisters who lived together but gave conflicting testimonies, that he was never subjected to a medical examination, that there was a dispute between the two families and therefore the charges were trumped up, and that his sentence was excessive. Upon the review and re-evaluation



of the evidence presented in the trial court, the High Court dismissed the appeal in its entirety on 16th December, 2014. Still dissatisfied, the appellant has now escalated the matter to this Court by way of the second and perhaps last appeal.

4. In his Memorandum of Appeal, the appellant raised seven grounds, arguing that the sentence imposed by the first appellate court was disproportionate to the weight of evidence and circumstances surrounding the crime; that the trial court imposed and first appellate court upheld a mandatory sentence, which he believed was contrary to the objectives of conviction, particularly rehabilitation; that the first appellate court failed to consider that PW1 and PW2 were sisters, and that the prosecution did not present independent witnesses; that he was never subjected to a medical assessment and finally, that he had now served more than ten years in prison.
5. When the appeal came up for hearing on 5th May, 2025, the appellant appeared in person on our virtual platform whereas the respondent was represented by Mr Okango, learned Assistant Director of Public Prosecutions. The appellant opted to drop the appeal on conviction. He however elected to pursue the appeal against sentence only. The appellant also indicated that he wished to entirely rely on his written submissions. He submitted that sentence imposed should be reduced to the least severe punishment in line with Article 50[2][p] of *the Constitution*. He contended that the sentence imposed was disproportionate to the weight of the evidence and circumstances surrounding the crime, emphasizing that punishment should consider the circumstances of the case and the accused's background. He further argued that the first appellate court upheld a mandatory sentence, which contradicts the principles of rehabilitation.
6. Additionally, he submitted that the circumstances of the offence were overlooked, despite Section 33 of the *Sexual Offences Act* ["SOA"] requiring courts to consider all relevant factors. The appellant also highlighted that he was not subjected to a medical check-up to ascertain his guilt, citing Section 36[1] of the SOA, which allows for scientific testing to determine culpability.
7. Moreover, he pointed out that he had been incarcerated for 12 years and was now over 65 years old, and is rehabilitated, remorseful, and ready to reintegrate into society. He made reference to the case of *Muratetu & Another v Republic* [Petition No. 15 & 16 of 2015] [2021] KESC 31, which outlined sentencing guidelines and considerations, including age, character, remorse, and potential for reform. He further emphasized the objectives of sentencing, as outlined in the 2023 Sentencing Guidelines, including rehabilitation, deterrence, retribution, restorative justice, community protection, and reintegration, arguing that they should be applied flexibly rather than rigidly. He asserted that the sentence renders mitigation factors, probation reports, and victim impact assessments irrelevant, citing *Jared Koita Injiri v Republic* [CR Appeal No. 93 of 2014], where the court ruled that mandatory minimum sentences under *sexual offences Act* are unconstitutional as they ousted judicial discretion. Lastly, the appellant highlighted his family circumstances, stating that at the time of sentencing, he left behind his young child, who has been without a guardian since his wife passed away, and requests justice and reconsideration of his sentence.
8. In opposition Mr. Okango submitted that the trial and first appellate courts properly considered the weight of evidence, applicable law, and relevant factors when convicting and sentencing the appellant. The appellant was sentenced to 20 years imprisonment which is the statutory sentence for defilement under Section 8[3] of the SOA. The trial court correctly applied the law, and when the appellant appealed to the High Court, his conviction and sentence were lawfully upheld. The Supreme Court in *Republic v Mwangi; Initiative for Strategic Litigation in Africa [ISLA]* [supra] reaffirmed the validity of mandatory minimum sentences under the SOA, stating that Section 8 remains legally binding. In the premises, counsel submitted that the appeal lacked merit and should be dismissed while upholding the conviction and sentence.



9. Having duly considered the record of appeal, the memorandum of appeal, the submissions and authorities referred to by the parties, and this Court’s mandate, the main issue for determination is whether there is any justification for this Court to interfere with the sentence of twenty years imprisonment that was imposed upon the appellant, based on his arguments concerning proportionality, rehabilitation, judicial discretion, and time already served. The appellant does not challenge his conviction, but he asserts that the mandatory minimum sentence of 20 years imprisonment under Section 8[3] of the SOA is excessive, contrary to the objectives of rehabilitation, and fails to incorporate mitigating factors such as his age, time served, and remorse.
10. Upon review, we find no justifiable basis to interfere with the sentence imposed by the trial court and affirmed by the first appellate court. The Supreme Court in *Republic v Mwangi* [supra], a decision relied upon by the respondent and one with which we concur, upheld the legality of mandatory minimum sentences under the SOA, emphasizing that as long as Section 8 remains valid, its prescribed penalties are binding.
11. Moreover, even if we were to take a contrary view, Section 361[1] of the *Criminal Procedure Code* precludes the appellant from challenging the severity of sentence on a second appeal, as sentence severity is a matter of fact rather than law. In the same case the Supreme Court reaffirmed that this Court is barred from reviewing sentence severity unless the High Court has enhanced the same. The judgment clarified that an appeal on harshness or excessiveness of sentence does not fall within the purview of this Court, except where a trial or appellate court misapplied legal principles or omitted essential considerations.
12. In the light of the mandatory sentencing framework, and the jurisprudence that has since been established, we are satisfied that the appellant has failed to provide sufficient grounds for the revision of his sentence. Consequently, the appeal on sentence is dismissed.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

