



**PAK v Republic (Criminal Appeal 32 of 2020)  
[2024] KECA 989 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KECA 989 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CRIMINAL APPEAL 32 OF 2020  
MA WARSAME, LA ACHODE & WK KORIR, JJA  
JULY 26, 2024**

**BETWEEN**

**PAK ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the judgement of the High Court of Kenya at Bungoma  
(Cherere, J.) dated 9th November, 2018 in H.C.C.R.A No. 213 of 2016)*

**JUDGMENT**

1. The appellant was convicted by the Chief Magistrate at Sirisia for the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* and was sentenced to life imprisonment. He appealed to the High Court at Bungoma against both conviction and sentence but the High Court dismissed the appeal. He has now lodged this second appeal before this Court.
2. In his notice of appeal and written submissions, the appellant challenged the judgment of the High Court on both conviction and sentence. However, when the matter came up before us for plenary hearing on 24th June, 2024, the appellant who was in person opted to withdraw the appeal against conviction and indicated to the Court that he was only appealing against sentence.
3. Relying on his submissions dated 20th June, 2024, the appellant stated that the mandatory sentence imposed by the Court was illegal and excessive. Citing the case of Julius Kitsao Manyeso v Republic
4. Miss Githaiga who appeared for the state opposed the appeal and prayed that the sentence be upheld. She emphasised that the appellant was a person in authority and that the victim was a young girl of only 9 years.
5. To briefly put the appeal into context, the complainant, S.M. (8 years at the time) was on her way to the market when the accused, whom she referred to as teacher Allan (and who was a distant uncle),



called her and sent her to 'Jairo's house to get something. The accused followed her into the house, locked it and defiled her. After the incident, S.M. met with her father, who noticed she was shaken and in pain. Upon examination by her mother, they concluded that she had been defiled and took her to the police station, which led to a hospital referral. The clinical officer confirmed defilement, noting a broken hymen, fresh bleeding, presence of spermatozoa, and lacerations on the vaginal walls. The appellant was thereafter arrested and convicted.

6. We have considered the appellant's appeal against sentence. Severity of sentence is a matter of fact. However, where the issue raised relates to an error in law, or that in imposing the sentence the court acted on the wrong principle of law or misdirected itself in some respect, or the exercise of discretion was plainly wrong, only then can this court interfere with the exercise of judicial discretion. (see *Mbogo v Shab* [1968] EA 93)
7. In sentencing the appellant, the trial court considered the appellant's mitigation that; he was a first time offender, a parent to 10 children who would suffer in his absence and a teacher with TSC who was a pillar of a society that greatly depended on him. In sentencing the appellant to life imprisonment, the trial magistrate noted that the offence was serious in nature and that the accused who was 48 years at the time of the incident took advantage of a young girl of tender years and defiled her. He further noted that even though no amount of punishment was sufficient for the act committed. The High Court in upholding the sentence noted that the sentence was within the provisions of Section 8(2) of the *Sexual Offences Act*.
8. Given the circumstances in which the offence was committed and the complainant being a young girl whom the appellant as a teacher and uncle ought to have protected, we are of the view that the sentence of life imprisonment was proper and lawful and in full exercise of the court's discretion in sentencing. Furthermore, here, is no palpable misdirection by the court apparent on the record. We do not perceive any material factor that was overlooked or any immaterial factor that was taken into account. The sentence meted out was proportionate to the offending behaviour in the circumstance and in line with the Section 8(2) of the *Sexual Offences Act* and the sentencing policy guidelines, 2023.
9. In the end, we see no reason to interfere with the concurrent findings of the two courts below. Accordingly, the appeal lacks merit and is hereby dismissed.

**DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF JULY, 2024.**

**M. WARSAME**

**JUDGE OF APPEAL**

**L. ACHODE**

**JUDGE OF APPEAL**

**W. K. KORIR**

I certify that this is a true copy of the original

Signed DEPUTY REGISTRAR

**JUDGE OF APPEAL**

