



REPUBLIC OF KENYA



KENYA LAW
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**Mamboleo v Republic (Criminal Appeal 162 of 2016)
[2023] KECA 163 (KLR) (17 February 2023) (Judgment)**

Neutral citation: [2023] KECA 163 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 162 OF 2016
PO KIAGE, M NGUGI & F TUIYOTT, JJA
FEBRUARY 17, 2023**

BETWEEN

JOSEPH KARANDE MAMBOLEO APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from the Judgment of the High Court of Kenya at Kakamega
(G. Dulu, J) dated 12th November, 2015.inHCCRA No. 127 of 2013)*

JUDGMENT

1. This second appeal is against sentence only.
2. Joseph Karende Mamboleo, the appellant, is serving a sentence of 20 years imposed on him on June 28, 2013 upon conviction for the offence of attempted defilement contrary to section 8(1)(3) of the *Sexual Offences Act* No 3 of the 2006. His first appeal against both conviction and sentence was unsuccessful.
3. In passing the sentence, the trial court observed:

“Mitigation noted. Section 8(1)(3) of the *Sexual Offences Act* provides for a mandatory sentence of not less than 20 years. This court is bound by that law. I therefore sentence the accused 20 years’ imprisonment (sic)”
4. In upholding the sentence Dulu, J stated,

“The sentence of 20 years’ imprisonment is the minimum punishment provided by law. The trial court had no option but to impose that punishment. The sentence cannot be said to be harsh or excessive.”



5. Although the state, through learned counsel Mr Okang'o, opposed the appeal, we are of the view that it is merited. We are now in an era where the law is that the minimum sentences prescribed for various offences under the Sexual Offences Act are not mandatory. At trial the appellant offered the following mitigation;

“I stay with my mother. My brother passed away. I have not established myself at home. I am still a young man.”

6. At the time of commission of the offence the estimated age of the appellant was 20 years. As of today the appellant will have served a prison term of about 8 years and 6 months and would be about 31 years old. It seems to us that this young man has suffered enough punishment for his misdeed and deserves a reprieve. In allowing the appeal we note that the victim was 15 years old at the time of the offence. While we can never minimize the seriousness of the offence, the age of the victim may be of some comfort to us that the leniency we have extended to the appellant is not inappropriate.

7. We allow the appeal. The sentence is reduced to the period served. The appellant shall be released forthwith unless held for some other lawful reason or reasons.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF FEBRUARY, 2023.

P.O. KIAGE

JUDGE OF APPEAL

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MUMBI NGUGI

JUDGE OF APPEAL

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F. TUIYOTT

JUDGE OF APPEAL

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I certify that this is a true copy of the original.

DEPUTY REGISTRAR

