



**Kangethe v Republic (Criminal Appeal 14 of 2019)
[2022] KECA 756 (KLR) (24 June 2022) (Judgment)**

Neutral citation: [2022] KECA 756 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPEAL 14 OF 2019
MSA MAKHANDIA, S OLE KANTAI & KI LAIBUTA, JJA
JUNE 24, 2022**

BETWEEN

PATRICK MWANGI KANGETHE APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the Judgment of the High Court of Kenya at Kiambu
(L.N. Mutende, J.) dated 15th June, 2017 in HC. CR.A. No. 157 of 2016)*

JUDGMENT

1. The appellant, Patrick Mwangi Kangethe, was convicted on the main charge of defilement contrary to Section 8(1) (2) of the *Sexual Offences Act* No. 3 of 2006, the trial court finding that the prosecution had proved beyond reasonable doubt that he had, on 19th January 2014, at a place in Kiambu County, caused his penis to penetrate the vagina of SWW, a child aged 10 years. He was fortunate to be sentenced to 30 years imprisonment in the Judgment delivered on 17th May, 2016. We say so because the prescribed sentence for the offence he faced under the said Act was life imprisonment, but that issue is not alive before us. He filed an appeal to the High Court of Kenya at Kiambu but that appeal was dismissed in a Judgment delivered on 15th June, 2017 (Mutende, J.), the court finding it lacking in merits.
2. In the homemade “Mitigation of Appeal” to this Court filed on 14th November 2017, the appellant requests that we reduce the sentence; that he was reformed and would not commit another offence promising to be a good citizen going forward; and that he is an orphan who has attained certain grades while training in prison.



3. Our mandate on a second appeal like this one is donated by Section 361 (1) (a) of the Criminal Procedure Code which provides:

361 (1) A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

a. on a matter of fact, and severity of sentence is a matter of fact.”

4. The jurisdiction of this Court on a second appeal as is the case here has received judicial pronouncements in various cases such as the case of *Stephen M'Trungi & Another v Republic* [1982-88] 1 KAR 360, where it was held:

Where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of law or mixed finding of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.”

5. As we have stated, the appellant faced a charge for an offence where upon conviction, he should have been sentenced to life imprisonment. He was instead given a custodial sentence of 30 years. We agree with the impugned judgment of the High Court and find no merit in this appeal, which we hereby dismiss.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JUNE, 2022.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

Dr. K.I. LAIBUTA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

