



**Karanja v Republic (Criminal Appeal 56 of 2020)
[2022] KECA 841 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KECA 841 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPEAL 56 OF 2020
F SICHALE & S OLE KANTAI, JJA
JULY 22, 2022**

BETWEEN

ANTHONY MUCHIRI KARANJA APPELLANT

AND

REPUBLIC RESPONDENT

*(An Appeal from the judgment of the High Court of Kenya at Kiambu
(Majanja, J.) dated 6th January, 2020 in HCRA no. 14 of 2018)*

JUDGMENT

1. On January 26, 2018, the appellant, Anthony Muchiri Karanja was found guilty of committing an indecent act with a child contrary to S.11(1) of the *Sexual Offences Act* by Hon. Kituku, the then Principal Magistrate, Kiambu Law Courts. The appellant was sentenced to life imprisonment. He was dissatisfied with the outcome of the trial and preferred an appeal to the High Court of Kenya at Kiambu that resulted in his sentence being reduced to 25 years' imprisonment by Majanja, J.
2. Undeterred, the appellant has now filed this appeal before us. In his homegrown Memorandum of Appeal, the appellant listed 5 grounds of appeal (the sixth one being a request for proceedings) which in sum boil down to the contention that there was insufficient evidence to warrant a conviction.
3. On February 21, 2022, the appeal came up before us for hearing where in a brief highlight, the appellant asked us to reduce his sentence with an undertaking that he would educate others when he gains his liberty. He referred us to his submissions filed that morning.
4. On behalf of the State, learned counsel Miss Matiru relied on the respondent's written submissions dated February 17, 2022. She pointed out that the appellant was lucky that his sentence was reduced to 25 years, given the age of the victim.



5. In his written submissions, the appellant complained that he was not accorded a fair hearing as although on August 19, 2016, an order was made that the case starts de novo, that was not the case as the witnesses were not recalled. Further, that the ingredients of the offence were not established and finally, that his defence was not considered.
6. In the State counsel's submissions dated February 17, 2022, it was submitted that the age of the complainant (she was 7 years old) was proved by the evidence of her mother, P.W1 who produced a Child Immunization Card to support her contention that the child was 7 (seven) years old; that Dr. Sheko who filled the form produced by P.W3, Dr. Maundu established that the victim's hymen was red in colour (as opposed to pink); that there was pain on the vagina on touch and that it was tender; that this was a case of recognition; that P.W.3, the appellant's landlady forced open the door of the appellant's house where she found the appellant with the victim. We were urged to dismiss the appeal.
7. We have considered the record, the written submissions of both parties, the authorities cited and the law. The appeal before us is a second appeal. Our mandate in a second appeal is as stipulated in Section 361(I)(a) of the *Criminal Procedure Code* which provides:
 - 361 (I) "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; or
 - (b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence."
8. In so far as case law is concerned, the decision of *David Njoroge Macharia vs. Republic* [2011] eKLR sums up the said mandate. In the said decision, it was stated:

"Only matters of law fall for consideration and the court will not normally interfere with concurrent findings of fact by the two courts below unless such findings are based on no evidence, or are based on a misapprehension of the evidence, or the courts below are shown demonstrably to have acted on wrong principles in making the findings. (see also *Chemagong vs. Republic* [1984] KLR 213).
9. Similarly, in *Kaingo versus Republic* [1982] KLR 213 it was held as follows:

"A second appeal must be confined to points of law and this Court will not interfere with concurrent findings of fact arrived at in the two courts below unless based on no evidence. The test to be applied on second appeal is whether there was any evidence on which the trial court could find as it did (*Reuben Karoti S/O Karanja versus Republic* [1956 17 EALA 146]."
10. Firstly, it would appear that during the plenary hearing, the appellant's complaint was that the sentence was excessive. Sentence is a matter of fact that we cannot readily interfere with. On the facts evaluated by the trial court and re- evaluated by the 1st appellate court, we are satisfied that the age of the victim was proved to be 7 years. The identity of the appellant was not in issue as he was known by the victim as well as his landlady. It was also established that there had been penetration. We see no reason to interfere with the concurrent findings of the two courts below.



11. The additional grounds raised in the submissions cannot be considered by us having not been the subject of determination by the first appellate court.
12. As regards the sentence, Section 8(1) as read with S.8(2) of the *Sexual Offences Act* provides a sentence of life imprisonment for defilement of a minor below the age of 11 years. We are in agreement with Miss Matiru for the State that the appellant was lucky to have had the sentence reduced to 25 years' imprisonment by the High Court. He deserved a life sentence.
13. However, as there was no cross-appeal, we shall not disturb the sentence.
14. The upshot of the above is that we find no merit in this appeal. It is hereby dismissed.
15. It is so ordered.

This judgment has been delivered in accordance with Rule 34(3) of the Court of Appeal Rules, Nambuye, J.A having ceased being a judge of appeal following her retirement.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2022.

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

