



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mbuvi v Republic (Criminal Appeal E091 of 2024)  
[2025] KEHC 1154 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL APPEAL E091 OF 2024  
EN MAINA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**ONESMUS NGILA MBUVI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from conviction and sentence by Hon. H. Mbatia (PM) at  
the Machakos Chief Magistrate's Court Criminal S.O. No. E020 of 2023)*

**JUDGMENT**

1. The Appellant was charged, tried and convicted and sentenced to thirty (30) years imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#).
2. Being aggrieved and being late in preferring an appeal he sought and obtained leave to appeal out of time whereupon he filed this appeal on 8<sup>th</sup> October, 2024.
3. The grounds of Appeal as set out in the Petition of Appeal are :-
  1. That the learned trial magistrate erred in law and facts by failing to warn the Appellant the consequence of pleading guilty.
  2. That the learned trial magistrate erred in law and facts when she meted a very harsh sentence without due regard to plea of guilty as a mitigating factor.
  3. That the Appellant be served with the trial records to help him prepare more substantial grounds and to be present during appeal hearing.
  4. He urged this court to allow the appeal and to quash the sentence of thirty (30) years imprisonment.



5. When the file was placed before this court for directions on 11<sup>th</sup> February, 2025 Ms Kaburu learned Counsel for the state/Respondent sought time to file written submission whereupon the Appellant quickly informed this court that he was only concerned with reduction of the sentence as he had no issue with the conviction given that he had pleaded guilty to the charge. It was then that this court fixed the appeal for hearing on 24<sup>th</sup> February 2025 so that counsel for the Respondent/state could respond albeit orally.
6. Come the hearing the Appellant reiterated that he was interested only in reduction of the sentence; that he no longer had a problem with the conviction. He confirmed that he was convicted and sentenced to thirty years imprisonment for defiling a six (6) year old.
7. Ms Kaburu learned Prosecution Counsel, submitted that the state was opposed to the reduction of the sentence. She pointed out that Section 8(2) of the [Sexual offences Act](#) prescribes a sentence of life imprisonment and hence the sentence of imprisonment for thirty (30) years imposed by the trial court was very lenient. She urged this court to dismiss this appeal to which the Appellant replied that he did not disagree with.
8. Ordinarily, in an appeal the Appellate court re-evaluates the evidence adduced in the trial court, so as to arrive at its own conclusion while bearing in mind that it did not hear or see the witnesses as did the trial court (see the case of Okeno v Republic [1972] EA 32.)
9. In this Appeal however, the Appellant pleaded guilty to the charge and whereas initially he had raised the issue of not being warned of the consequences of pleading guilty, he has since abandoned the appeal against the conviction. Moreover, I have perused the record of the lower court I am satisfied that the plea was unequivocal. It is the appellant himself who intimated that he wished to change his plea and when the facts were read to him he confirmed they were correct. He has also repeatedly told this court that he admitted the offence and he does not therefore wish to pursue the appeal on conviction.
10. Having found that the plea of guilty was unequivocal what remains is the appeal on sentence.
11. Section 354 (3)(b) of the [Criminal Procedure Code](#) gives power to this court to increase or reduce or alter the nature of a sentence in an appeal against sentence. It is however instructive that the offence for which the Appellant was convicted prescribes a minimum sentence of life imprisonment. Whether or not a court can go below that sentence was the issue in the case of Republic -vs- Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) Petition E018 of 2023 [2024] KESC 34 (KLR) (12<sup>th</sup> July 2024) (Judgment) where the Supreme Court was emphatic that where Parliament has prescribed a minimum sentence a court cannot impose a lesser sentence. The Supreme Court distinguished a mandatory sentence from a minimum sentence and held that a minimum sentence being the minimum prescribed by the law cannot be substituted with another sentence.
12. Applying the decision of the Supreme Court to this case, I agree with learned Prosecution Counsel that the sentence of Thirty (30) years imposed by the trial magistrate in fact departed from the minimum sentence prescribed by the law but as there is no cross-appeal, this court shall not interfere with it.
13. The Appeal is accordingly dismissed save that as the trial magistrate does not appear to have complied with Section 333(2) of the [Criminal Procedure Code](#) the sentence imposed by the trial court shall be computed to run from the date of arrest, to wit 24<sup>th</sup> July, 2023, so as to take into account the period of about three weeks the Appellant spent in remand custody.



It is so ordered.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**E. N. MAINA**

**JUDGE**

**27/02/2025**

In the presence of:

Ms Nyauncho for the state

Onesmus Ngila Mbuvi – Appellant in person - Online

C/A: Geoffrey

