



**MON v Republic (Criminal Appeal 3 of 2020)  
[2024] KEHC 4011 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4011 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL 3 OF 2020**

**KW KIARIE, J**

**APRIL 24, 2024**

**BETWEEN**

**MON ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O.A case No.26 of 2018 of the Principal Magistrate’s Court at Oyugis by Hon. J.S. Wesonga –Senior Resident Magistrate)*

**JUDGMENT**

1. MON, the appellant herein, was convicted of the offence of incest contrary to section 20 (1) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence were that on the 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> October 2018 at Rachuonyo South Sub-county of Homa Bay County, being a male person caused his penis to penetrate the vagina of R.A.O aged thirteen years, a female person who was to his knowledge his daughter.
3. The appellant was sentenced to life imprisonment. He has appealed against the sentence. He was in person. He raised the following grounds of appeal:
  - a. That the life sentence imposed against the appellant is unconstitutional, requesting the Hon. Court to set the life sentence and, in its place, pass the appropriate sentence.
  - b. This appeal does not seek to review the evidence on record, and the appellant does not contest his conviction by the trial court. It is mainly focused on the sentence only.
  - c. This honourable court should consider section 333(2) of the Criminal Procedure Code when determining the sentence, considering the period I have spent in custody since my arrest.
4. The state opposed the appeal. It was contended that the sentence was proper.



5. This is a first appellate court. As expected, I analysed and evaluated all the evidence before the lower court afresh, concluding while considering that I neither saw nor heard any of the witnesses. I will, therefore, be guided by the celebrated case of *Okeno vs Republic* [1972] E.A 32.

6. Section 20 (1) of the *Sexual Offences Act* provides:

Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.

7. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will exercise its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James vs. Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R Vs. Shershewcity* (1912) C.CA 28 T.LR 364.

8. Had the appellant been charged with defilement under section 8 (3) of the *Sexual Offences Act*, the sentence would have been not less than twenty years imprisonment. Incest is, however, more severe than defilement, for trust is betrayed. I am, therefore, persuaded to reduce the sentence. I set aside life imprisonment and substitute it with thirty years imprisonment. Since the accused remained in custody from his arrest, the sentence will run from 24 October 2018.

**DELIVERED AND SIGNED AT HOMA BAY THIS 24<sup>TH</sup> DAY OF APRIL, 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

