



REPUBLIC OF KENYA



KENYA LAW
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**Amukoya & another v Republic (Criminal Appeal 139 of 2014)
[2023] KECA 1558 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KECA 1558 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 139 OF 2014
PO KIAGE, F TUIYOT & WK KORIR, JJA
NOVEMBER 24, 2023**

BETWEEN

GIDEON AMUKOYA 1ST APPELLANT

ISAAC LIJOODI 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal against the sentence from Judgment of the High Court of Kenya at Kakamega (L. Kimaru, J) dated 19th June 2012 in H.C.CR.A. Nos. 94 & 95 of 2007)

JUDGMENT

1. When this criminal appeal came up for hearing, Gideon Amukoya (the 1st appellant) abandoned his challenge against conviction leaving it to sentence only.
2. The 1st appellant is serving a life imprisonment having been convicted of the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, Act No. 3 of 2006. His co-accused Isaac Lijoodi faced a similar fate. In respect to the 1st appellant, the particulars of the offence for which he was convicted were that on 17th June, 2006 in Kakamega District, he had unlawful carnal knowledge of MO, a girl aged 9 years.
3. Both convictions and sentences were upheld by the High Court (Kimaru, J as he then was) in a judgment delivered on 19th June, 2012. Although both accused persons preferred second appeals to this Court, a signal from OCP Kibos Maximum Prison was placed before us informing the Court that Isaac Lijoodi passed away on 22nd January, 2021. On the strength of that information, the Court marked his appeal as abated pursuant to Rule 71(1)(a) of the *Court of Appeal Rules, 2022*.
4. In sentencing the 1st appellant, the trial court noted that the sentence prescribed by the penal provisions of the offence were mandatory while the High Court observed the sentence to be lawful.



5. Before us, Mr. Okango Senior prosecution counsel, conceded the appeal on sentence in view of the recent application by this Court (See for example *Mwangi v Republic* (Criminal Appeal 84 of 2015) [2022] KECA 1106 (KLR) (7 October 2022) (Judgment)) of the jurisprudence in *Francis Karioko Muruatetu & Another vs. Republic*, Petition No. 15 of 2015 (Muruatetu 1), that clarified that mandatory sentences should not hamstring the exercise of discretion of a sentencing court in imposing sentences, in sentences under the *Sexual Offences Act*.
6. The 1st appellant told us that he was remorseful for the offence and had since reformed. He beseeched us to be lenient and sought a substantial reduction of the sentence. Before the trial court, he had also sought leniency for the reasons that; he had recently lost one of his children to death; his wife had deserted him, and he was the sole breadwinner for his family.
7. Learned counsel Okango urged the Court to consider that the victim was 9 years old and the sexual assault had left her with serious injuries. Counsel thought a sentence of 25 years to be fair.
8. We have reflected on what would be an appropriate sentence for the offence committed by the 1st appellant. Defilement is always objectionable, but it is worse still when the victim is so young as the complainant here, 9 years old. It does not help that the assault left her with injuries, albeit temporary. It is depraved when the assault was repeated, here at least 3 times. All these are aggravating circumstances. For this reason, the appellant's remorse is somewhat pale.
9. In the end, nevertheless, we set aside the sentence of life imprisonment and substitute it with a sentence of 25 years effective on the date of sentence at trial.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF NOVEMBER, 2023.

P.O. KIAGE

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

