



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanyonyi v Republic (Criminal Appeal 51 of 2012)  
[2023] KEHC 3697 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3697 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL APPEAL 51 OF 2012**

**REA OUGO, J**

**APRIL 28, 2023**

**BETWEEN**

**MARTIN SIMIYU WANYONYI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Martin Simiyu Wanyonyi filed an appeal in this court against the judgment of PM's Court Webuye Criminal Case No. 124/2010. He was dissatisfied with the conviction and sentencing of life imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual offences Act](#) NO. 3 of 2006.
2. His appeal has never been heard. It was first placed before the judge in 2018. Since then, there have been several attempts to obtain the court proceedings for appeal purposes.
3. It is clear from the Memorandum of appeal filed that the appellant was convicted of the offence of defilement and is serving a life sentence.
4. The Respondent has challenged the released of the appellant and relied on the case of [John Karanja Wainaina v Republic](#) Criminal Appeal No. 61 of 1993 and the case of [Joseph Maina Karuiki v Republic](#) Cr. Appeal No. 53 of 2004 where the Court of Appeal held that in acquittal shouldn't follow case result of the file missing and that appellant had lost the benefit of innocence and that the burden was on the appellant to show that the court that convicted him is in error. It was further submitted that in this case a retrial cannot even take place as the victim is now an adult and she cannot be traced.
5. The appellant in response requested this court to be allowed to go free and that he is not seeking a re-sentencing.



6. I have considered the appellant's application . The appellant was tried and convicted by a court of competent jurisdiction at Webuye PM's Court. I am guided by the 2 court of appeal decisions cited by the Respondent that an acquittal should not follow as a matter of course when a file has disappeared. The appellant lost the benefit of presumption of innocence given to him by the Constitution having been convicted by a competent court. The Respondent told court that the victim is now an adult and cannot be traced thus a retrial cannot be ordered. I therefore reject the appellant's plea to be released.

**DATED, SIGNED AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 28TH DAY OF APRIL 2023.**

**R.E.OUGO**

**JUDGE**

**In the presence of:**

Appellant in person

Miss Omondi for the Respondent

Wilkister C/A

