



REPUBLIC OF KENYA



**KENYA LAW**  
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**RK v Republic (Criminal Appeal E033 of 2021)  
[2023] KEHC 19116 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 19116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL APPEAL E033 OF 2021**

**JR KARANJA, J**

**MAY 25, 2023**

**BETWEEN**

**RK ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Robert Kipsang Langat appeared before the Senior Principal Magistrate at Kapsabet charged with attempted rape, contrary to section 4 of the *Sexual Offences Act*. It was alleged that on the 26<sup>th</sup> December 2018 in Tinderet Nandi County he intentionally and unlawfully attempted to rape CN without her consent.

2. After pleading not guilty, the Appellant was tried, convicted and sentenced to serve ten (10) years imprisonment.

Being dissatisfied with the conviction and sentence, the Appellant preferred the present appeal on the basis of the ground, set out in the petition of appeal dated 16<sup>th</sup> November 2021.

At the hearing of the appeal the appellant appeared in person and relied on his grounds of appeal in support of the appeal. He submitted that he was more interested in having the sentence reviewed as he considered it to be hereby and excessive as he is a married man with four children, three of whom need to undergo surgery. He therefore urged the court to allow the appeal in that regard.

3. The State/Respondent opposed the appeal through the Learned Senior Principal Prosecution Counsel, Ms. Brenda Oduor Bengo on the basis of the grounds contained in their written submission filed herein on 4<sup>th</sup> May 2023 in which it is contended that the offence was duly proved as required and that the Appellant was positively identified as the offender. That the Appellant's defence was a sham incapable of shaking the prosecution's evidence which was water tight against the Appellant.

The Respondent therefore urged this court to dismiss the appeal for want of merit.



4. Having duly considered the appeal on the basis of the supporting grounds and the rival submissions, the duty of this court was to reconsider the evidence adduced at the trial and arrive at its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.
5. In that regard, the prosecution case was briefly that on the material date at about 7:00 PM, the Complainant CC (PW2) met the appellant, a person known to her and married to her cousin. He then grabbed and wrestled her on to the ground with the intention to drag her into a bush. She made noise even as he attempted to undress and remove her underpants. She bit him on the shoulder and kicked him while raising alarm before he took away the items she had purchased from a shop. She reported the incident to the Appellant's parents and was escorted to her home by a good Samaritan.
6. After reporting the matter to the police, the Complainant was referred to Nandi Hills Hospital where she was examined by a Clinical Officer, TTK (PW1) who confirmed that she suffered physical injuries and compiled the necessary P3 (P.EX. 2).

The Complainant's child (PW3) alluded to the Appellant having gone to their home asking for the Complainant before he went to wait for her beside a road. Later the Complainant arrived home and reported that the Appellant had lifted and pulled her to the ground. The report was made to the Complainant's husband, SKN (PW4).

7. In his defence the Appellant denied the offence and contended that he did not attempt to rape the Complainant. The Trial Court considered the defence against the evidence led by the Prosecution against the Appellant and concluded that the charge was duly satisfied against the Appellant beyond any reasonable doubt. He was therefore convicted and sentenced accordingly.
8. This court, having revisited the evidence, was satisfied that indeed the Appellant met the Complainant on the material date and suddenly grabbed and threw her down to the ground. He then attempted to strip her off her inner garment but for her resistance and screams he fell short of his intention to have carnal knowledge of her forcefully and without her consent. His grabbing of the Complainant and throwing her to the ground while attempting to undress and strip her off her underpants was a clear manifestation of his unlawful intention to rape the Complainant.
9. The Appellant's conviction by the trial court was therefore safe, and proper and is hereby upheld.

With regard to the sentence, Section 4 of the [Sexual Offences Act](#) provides for a minimum sentence of five (5) years which may be enhanced to imprisonment for life.

The sentence imposed by the trial court of ten (10) years imprisonment was lawful but excessive as the appellant was a first offender and the pre-sentence report from the probation officer was largely favourable to him.

It would therefore be just and fair for this court to interfere with the sentence by setting it aside and substituting it for a sentence of five (5) years imprisonment from the date of judgment of this trial court i.e. 5<sup>th</sup> August, 2021.

Other than the alteration in the sentence, the appeal on conviction is hereby dismissed for want of merit.

Ordered accordingly.

**(DELIVERED, DATED AND SIGNED AT KAPSABET THIS 25<sup>TH</sup> DAY OF MAY, 2023.)**

**J.R. KARANJAH**

**JUDGE**

