



REPUBLIC OF KENYA



**KENYA LAW**  
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**RI v Republic (Criminal Appeal E003 of 2022)  
[2022] KEHC 16642 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 16642 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL APPEAL E003 OF 2022  
A. ONG'INJO, J  
NOVEMBER 24, 2022**

**BETWEEN**

**RI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against conviction and sentence by Hon. Amwayi,  
Senior Resident Magistrate on 3rd January 2022 in Mombasa Chief  
Magistrate's Court Criminal Case No. 183 of 2017, Republic v Rashid Iddi)*

**JUDGMENT**

**Background**

1. RI was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No 3 of 2006. The particulars are that RI on the January 19, 2017 at [Particulars Withheld] area in Likoni District within Mombasa County unlawfully and intentionally caused his penis to penetrate the vagina of RJ a child of 11 years.
2. In the alternative count, the appellant was charged with the offence of indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* No 3 of 2006. The particulars are that RI on the on the January 19, 2017 at [Particulars Withheld] area in Likoni District within Mombasa County, intentionally and unlawfully did an indecent act by touching the vagina of RJ a child of 11 years with his penis.
3. The trial magistrate considered the evidence of the five prosecution witnesses and the sworn statement of the appellant together with one defence witness, and convicted the appellant who was sentenced to serve life imprisonment.



4. The appellant was aggrieved by the conviction and sentence and he preferred the appeal herein on the following amended grounds: -
  1. That the Learned Trial Magistrate erred in law and fact in coming to a finding that the prosecution had proved its case against the accused.
  2. That the Learned Trial Magistrate erred in law and fact in relying on the evidence of the accused person's wife (BHM) without due consideration of the principle of husband-wife exception as set out in Section 127 of the *Evidence Act*.
  3. That the Learned Trial Succeeding Magistrate erred in law and fact by unfairly dismissing the Appellant's application to have the matter start de novo despite the fact that witnesses were readily available and in doing so, the appellant was prejudiced.
  4. That the Learned Trial Magistrate erred in law and fact in disregarding the Appellant's defence.
  5. That the sentence was manifestly excessive and harsh.
5. The appellant prayed that the appeal be allowed, conviction quashed and sentence set aside. The appeal was canvassed by way of written submissions.

#### **Prosecution case**

6. PW1, RJ who is the complainant herein underwent voir dire examination and the court established that the complainant was capable of giving evidence since she understood the nature of the proceedings and so the court proceeded to record her evidence. PW1 stated that she was 12 years old, lived in [Particulars Withheld] with her aunt BH and that she was in class 5. She stated that she knew RI and identified him in court by pointing at him and that he was her uncle married to her aunt. She stated that her aunt was ill and went to her mother, leaving her with her uncle since she was going to school. She stated that after school, her uncle went home and that they were just the two of them. That her uncle cooked and directed her to go take a shower.
7. PW1 stated that at night her uncle went to her room and ordered her to go to his room but she refused. That he then went over to his bed, removed her clothes, removed his penis, inserted it into her vagina and that it was painful. That she hid herself in the cupboard but he saw her and again inserted his penis into her vagina and his fingers in her anus. That the next day she went to school but spent the night at her grandmother's place till her aunt got back and asked why she was walking with difficulties. She stated that she was afraid of telling her aunt BH and so she reported to her aunt what had happened. She stated that she was taken to hospital while in the company of the two aunts. That the two aunts reported to the police who went and arrested RI at home. She stated that it was her first sexual act she was still in pain when her aunt went home.
8. PW2, BH stated that she lived in [Particulars Withheld] and a lab technician at [Particulars Withheld] Secondary. She stated that the complainant is her niece and had been staying with her for 2 years. That on January 19, 2017, PW2 was indisposed and she alerted her husband RI whom she identified in court by pointing at him. She stated that she informed him that she would go to her mother and that she left the complainant behind with her husband. She stated that RJ was 12 years old and that she was born in April 1, 2005 and that she had a copy of her birth certificate marked MFI – 1 whose original was in Tanzania.
9. PW2 stated that she observed that the complainant was walking with difficulties and when she inquired from her what the problem was she kept quiet. She stated that a neighbor also noticed the unusual and PW2 alerted her husband who advised her that left handed people walk like that. PW2 stated that she



alerted her sister M who inquired from the complainant what was going on and she disclosed that she had been defiled by her husband. PW2 stated that they filed a report at Inuka Police Station which led to the arrest of RI while the complainant was escorted to Savannah Hospital where it was confirmed that she had been defiled as per treatment notes MFI – 2 where she was treated and given medication. According to PW2, the P3 was filled after the end of the doctor’s strike. That the PER form was filled on February 2, 2017 – MFI – 4 and it confirmed that the girl had been defiled. She stated that she did not have any grudge with her husband.

10. PW3, MHM stated that on February 1, 2017, her sister BH informed her that the complainant had a problem but was not revealing what was wrong. PW3 stated that she summoned the complainant who narrated to her that her uncle went to her room, removed her clothes and defiled her. She stated that she informed her sister of what her husband had done. That they filed a report and took the child to Savannah Hospital where it was confirmed that the child had been defiled. PW3 stated that the complainant’s uncle is also known as Daddy and her brother-in-law was the accused in court.
11. PW4, Dr Uba Hamed attached to Coast General Hospital made reference to the P3 Form filled by Dr Rabei who had other duties. He stated that the PRC form was filled on February 2, 2017 while the incident occurred on January 19, 2017. He stated that it was in respect to the outpatient No xxxx in respect or RJ born on April 1, 2005 who explained of having been defiled. That the perpetrator invaded the room of where the victim was sleeping and inserted his penis in her vagina. He stated that it was alleged that the victim had been defiled more than 5 times. PW4 stated that the hymen was broken with an old scar. That the outer genitalia were normal and there were no physical external injuries. He stated that HIV, Syphilis and Hepatitis B were negative and she was not given the PEP medication. He stated that the P3 Form was filled on March 30, 2017 by Dr Rabei. That it was a history of repeated defilement, no external injuries. That the object used was blunt and was given PEP medication. That the hymen was broken with an old scar and all the other tests were negative. PW4 stated that the injury was caused by a penis penetration. PW4 produced the PRC Form as Exhibit 3 and P3 Form as Exhibit 4.
12. PW5, No xxxx PCW Bakhita Valema, attached to Inuka Police Station crime office stated that on February 2, 2017, she was minuted a defilement case. She stated that she contacted the reporter and she was told that they were referred to the hospital. She stated that they went to the station and recorded the statement of a girl aged 11 years accompanied by BH and Hawa. PW5 stated that the complainant narrated to her that on January 19, 2017, she went back home and her uncle opened the house for her and that he prepared supper. That her uncle told her to shower and after that she went to bed to sleep.
13. PW5 stated that after a while, the uncle went and told her to follow him to his bedroom but she never went because she knew what he was about to do. That she climbed on a wardrobe in her bedroom and covered herself. That when she was hiding, the uncle went back and did not find her on the bed. That he went looking and found her in the wardrobe. That he brought her down and laid her on the bed where he undressed himself and her, went on to touch her and her anus and later inserted his penis into her vagina and defiled her. That on finishing, he threatened her not to tell anybody as he would buy her a present and went back to his room. That in the morning, he warmed her water to shower. That complainant stated that it was not the first time of him defiling her but this time round was the worst. PW5 stated that after a while, the aunt noted that her walking style was unusual, the girl was not opening up and so the aunt called one H to talk to the girl. That it is when they found out that the girl had been defiled and they filed a police report. That the suspect was arrested on April 2, 2017. PW5 identified the accused in court by pointing at him.



## Defence case

14. The accused, RI stated that he was aware of the charges levelled against him, denied the same and that the evidence of the complainant was fabricated. The accused stated that the complainant is not his relative but they had been living with her for about one year. The accused stated that he had a domestic dispute because he was involved in extra marital affair and his wife threatened to teach him a lesson. That she then evicted him from the house and threatened to teach him a lesson. That she evicted him from her house and informed his family. That they attempted to reconcile and settled their differences but he was doubting her intentions. The accused stated that the child has her own room and she was couched by his wife after he threatened to take her back to Tanzania. That he did not defile and sodomise her. That his wife was away on the material date of the alleged offence but went back after two days. That within the next one week the child was in good health condition and was going to school, and that the child did not spend at her grandmother's place.
15. The accused further stated that he was arrested on 19<sup>th</sup> which was about 11 days of the alleged material date and was not told of having committed the offence. He stated that he was in the house sleeping when he was arrested by the police. That it was around midnight and he was not told why he was being arrested. That he was escorted to Inuka Police Station and later on informed that he had defiled a child. He stated that he did not record his statement at the police, he was not asked to avail a witness and was not escorted to the hospital for examination. He stated that PW2 is his wife and they have a domestic grudge. That PW3 is his wife's sister who was disturbed by their affair since he was unemployed. He stated that he was not issued with a PRC and P3 forms, and was not informed of any investigations. That they had settled their indifferences and were still in love.
16. DW2, MH, stated that the accused is his step brother and that the complainant is a daughter to the wife of the accused. He stated that the accused and his wife had a domestic quarrel but he did not know what the problem was. That the issue was settled and they went back and cohabited. That the accused is a neighbor about 20 minutes' walk from his place.

## The Appellant's submissions

17. The Appellant submitted that the complainant was a child of tender years and the law requires that her evidence could be lawfully received but as provided by the *Oaths and Statutory Declarations Act* Cap 115 of the Laws of Kenya, particularly Section 9. That what the learned trial magistrate recorded at page 5, line 10 of the proceedings was clearly not what the law expected and commanded. That the trial court was just required to ask questions with a view to establishing that the witness understands what an oath is and makes a finding to that effect. That if positive, the witness is to take the oath and proceed. That if negative, the magistrate was required to find out again if the child would know the duty to tell the truth and if positive the child's evidence will still be received. The Appellant cited the case of *Kazungu Thoya Baya v Republic* to that effect. The Appellant concluded by submitting that the result of the error committed by the trial court is that the evidence of the complainant be excluded as a result of which there would be nothing to support the charge.
18. The appellant submitted that the court erred in allowing the doctor to produce the P3 form, and secondly the PRC form for which no application was made. That the PRC form on its face says it was filled by one Kalai SM and that nothing was said about him. That it was never suggested he or she was not available. It was never suggested that Dr Uba even knew him, let alone his handwriting. The appellant submitted that without the documents, there would be nothing to support or corroborate the evidence of the complainant especially on the face of denial by the appellant. That the court dealt



with the scenario in the cases of *Robert Shake Magesho v Republic (CR Appeal No 25 of 1998)* and *Dominic Kibet Mwareng v R (2013) eKLR*.

19. The appellant submitted on the issue of corroboration that the Act allows the court to accept and act on the evidence of the Complainant but only for reasons to be recorded, which was not done.
20. The appellant submitted on other failures under Section 200 of the CPC that hearing of the matter had commenced before Hon Amwayi SRM then took over. That on page 321 of the proceedings, the matter was before her on January 26, 2019 for directions under section 200 of the CPC. The accused desired the recall of the witnesses. That the prosecution counsel preferred the matter to proceed and the court ordered that a mention be held on January 29, 2020 to confirm availability of the witnesses and on January 29, 2020 the investigating officer attended court and confirmed that the witnesses were available but uncooperative. That the court then proceeded to rule that the matter shall proceed. The appellant submitted that under Section 200 (3) was denied just because compellable witnesses showed unwillingness to come to court yet the law allows the court to issue witness summons where a witness is reluctant. That the step taken by court not only prejudiced the appellant but also violated the trial and made the conviction unsustainable. The appellant submitted that the wife was made a witness in utter disregard of the law.

### **The Respondent's submissions**

21. The Respondent submitted that there was proof of penetration by PW4, Dr Uba Hamed who told the court that the complainant's hymen was broken and she was found to have an old scar, indicating a history of repeated defilement. That he produced the P3 and PRC as PExh 4 and PExh 3 respectively. On proof of age, the Respondent submitted that on October 3, 2017 during the voire dire examination by the trial court, the complainant stated that she was 12 years old and a grade 5 pupil, a position that was reiterated by her mother PW2 who gave her date of birth as April 1, 2005. The Respondent submitted on recognition that the trial court found that the complainant knew the appellant well as they had lived in the same house before the incident. PW1 testified that after school, her uncle, the Appellant, went to her home and cooked dinner then he asked her to take a bath. That the trial court found that she saw the perpetrator, whom she knew well and they had a conversation before the violation.
22. The respondent submitted on whether the appellant's wife, PW2 was a compellable witness by citing section 127 (3) of the *Evidence Act*. The Respondent stated that on October 3, 2017, PW2 testified before the trial court. That she is the mother to the complainant and from her evidence, there is presumption of marriage between her and the appellant. The Respondent submitted that PW2 was a competent/compellable witness, pursuant to Section 127 (3) of the *Sexual Offences Act*, bearing in mind that charges preferred fell under the *Sexual Offences Act*.
23. On whether the appellant's application to have the case start de novo was considered, the Respondent submitted that on November 26, 2019, Hon Rita Amwayi took over the case from Hon Nyaloti, CM and section 200 of the CPC was read to the appellant before his counsel, Mr Abubakar, Advocate, counsel for the appellant elected to have the case begin de novo but the application was opposed by the prosecution on the basis that a clear copy of the proceedings was available and there was no need for the case to start afresh (page 32 and 34 of the proceedings). At page 33 of the proceedings, the court directed that a ruling would be delivered on January 29, 2020 and summoned the Investigating Officer to explain the availability of witnesses.
24. The Respondent further submitted on the above that on January 29, 2020, the IO attended court and explained that the prosecution witnesses were uncooperative and had testified twice before. The



Respondent stated that they were not likely to avail themselves again in case the same had started again, de novo. That Mr Magolo went on record on the same day, for the appellant. The Respondent submitted that ruling on whether the case would start de novo was deferred to November 9, 2020, when Mr Magolo indicated he was ready to take dates for the defence case and that he had clearly abandoned his application for the case to start de novo as he was ready for the defence hearing.

25. The Respondent submitted on the defence theory that the appellant for the 1<sup>st</sup> time during the trial raised an alibi defence, indicating that he was not available on the day of the offence. He also stated that he was not in good terms with his wife and that she had fabricated the story. That however, during the testimony of D2 at page 29 of the proceedings, she informed the court that she was aware that the appellant and PW2 had long settled their differences, a position that was corroborated by D1. The Respondent submitted that the allegation does not displace the weight of the evidence tendered by the prosecution witnesses and the same was an afterthought, intended to cast doubt on the prosecution case. That D1 also testified that PW3 was a sister to his wife and had always opposed their marriage, and that it should not be believed. The Respondent submitted that this too was an afterthought as it was not raised during PW3's cross examination.
26. On whether the conviction and sentence were safe, the Respondent submitted that the elements of the offence of defilement were proved beyond reasonable doubt, and urged to uphold the conviction and sentence meted which were lawful.

### **Analysis and Determination**

27. This being the first appellate court, I am guided by the principles in [\*David Njuguna Wairimu v Republic \[2010\] eKLR\*](#) where the court of appeal held: -

' The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.'

28. After considering the grounds of appeal Records of trial courts, submissions and circumstances of the case, issues for determination are as follows: -
  - i. Whether the offence of defilement was properly proved
  - ii. Whether the principle of husband-wife exception as set out in Section 127 of the [\*Evidence Act\*](#) was considered
  - iii. Whether dismissal of the application to have the matter proceed denovo was prejudicial to the appellant
  - iv. Whether the trial magistrate disregarded the appellant's defence
  - v. Whether sentence of life imprisonment was excessive and harsh in the circumstances

### **Whether the offence of defilement was properly proved**

29. Section 8 (1) as read together with section 8 (2) of the [\*Sexual Offences Act\*](#) provides: -



- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
  - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
30. The age of the complainant, penetration and identification of the perpetrator are the ingredients that required to be proved by the prosecution beyond all reasonable doubt to establish that the complainant was defiled as follows: -

### **1. Age of the Complainant**

31. EXP1 – Certificate of birth shows that the complainant PW1 was born on April 1, 2005. This is proof of the age of the complainant when she was defiled.

### **2. Penetration**

32. EXP2 – Treatment notes confirm the complainant was defiled. Both the P3 and PRC forms confirm that the complainant had been defiled. PW1 narrated how the appellant, her aunt’s husband, defiled her when she remained with him when the aunt went to Tanzania to seek for treatment. PW2 and PW3 confirmed that they noticed PW1 was walking with difficulties and when PW2 asked the appellant, he said that left handed people walk like that. PW3 interrogated PW1 in confidence and she learnt that while her sister PW2 was away, the appellant defiled the 11-year-old girl. Dr Uba examined the complainant and established the complainant’s hymen had broken with an old scar. The doctor found history of repeated defilement.

### **3. Identification of the perpetrator**

33. PW1 identified the appellant as the perpetrator. She was living with the appellant and her aunt and that her aunt left her with the appellant when she went to Tanzania for treatment. It was at the aunt’s return that she saw PW1 was walking with difficulties but she was shy to say what happened. PW3 interrogated her and she narrated how the appellant abused her sexually when she remained alone in the house on two occasions. Even when she hid herself in the wardrobe, he searched for her and defiled her again.
34. There is no dispute that when PW2 travelled she left the complainant under the care of the appellant. There was no evidence that there was any other male person in that house other than the appellant. There was evidence of defilement and allegations of differences between the appellant and PW2 cannot negate that fact. In any case, PW2 was not cross examined on.
35. There is no dispute that when PW2 travelled she left the complainant under the care of the appellant. There was no evidence that there was any other male person in that house other than other than the appellant. There was evidence of defilement and allegations of differences between the appellant and PW2 cannot negate that fact. In any case, PW2 was not cross examined on any differences which she said she left her matrimonial home to go for treatment and not because of domestic dispute with the appellant and she said she had not differed with them. This court therefore finds that all ingredients of the offence of defilement were proved and ground 1 of the appeal cannot stand.

### **Whether the principle of husband-wife exception as set out in Section 127 of the *Evidence Act* was considered**

36. Section 127 (3) of the *Evidence Act* provide as follows: -



- (3) In criminal proceedings the wife or husband of the person charged shall be a competent and compellable witness for the prosecution or defence without the consent of such person, in any case where such person is charged: -
- (a) With the offence of bigamy; or
  - (b) With offences under the [Sexual Offences Act](#) (No 3 of 2006);
  - (c) In respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them, and not otherwise.
- (4) In this section 'husband' and 'wife' mean respectively the husband and wife of a marriage, whether or not monogamous, which is by law binding during the lifetime of both parties unless dissolved according to law, and includes a marriage under native or tribal custom.
37. No consent is required where a spouse is charged with the offence under the [Sexual Offences Act](#) No 3 of 2006. This position was held in the cases of [Julius Mwita Range v Republic \[2003\] eKLR](#), [Joseph Munyoki Kimatu v Republic \[2004\] KLR](#) and [Republic v Maxwell Mwaingolo \[2021\] eKLR](#).

**Whether dismissal of the application to have the matter proceed denovo was prejudicial to the appellant**

38. The evidence of all the prosecution witnesses as well as evidence of the appellant and his witnesses was recorded by Hon Kassam (SRM) Hon R. Amwayi (SRM) took over conduct of the matter on November 26, 2019 when Hon Kassam (SRM) proceeded on transfer. Mr Aboubakar Advocate and upon provisions of Section 200 (3) of the CPC being explained said he wanted the matter to proceed denovo. This was objected to by the prosecution saying it would be in the best interest of the complainant child that the matter proceeds from where it had reached.
39. The incoming trial court summoned the investigating officer to establish availability of witnesses. On January 29, 2020 PC Bhakita informed the court the witnesses were not cooperating as they had come to court and testified and they had also been recalled. She informed court she would not secure witnesses' attendance if the matter started denovo.
40. Mr Aboubakar Advocate informed court that Mr Magolo Advocate had also joined the team representing the appellant. Mr Aboubakar submitted that it was important for the incoming magistrate to observe the demeanour of the witnesses and therefore should all be recalled. Mr Magolo Advocate on the other hand argued that the appellant would be prejudiced if witnesses are not recalled. The prosecution counsel argued that the proceedings were clear and the trial magistrate should pick from they had reached as it was not fair to keep on calling witnesses back to court.
41. Provisions of Section 200 (3) of the Criminal Procedure Code state: -
200. Conviction on evidence partly recorded by one magistrate and partly by another
- (3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.
42. The accused had a right to be informed of the right under section 200 (3) of the CPC. However, it is not mandatory to recall witnesses.



43. The trial magistrate exhaustively dealt with the issue of recall of the witnesses in the ruling delivered on November 9, 2020. She said that it would not be in the interest of the complainant for a minor to be taken through the ordeal that she experienced when defiled. She also said the appellant was represented throughout the hearing by an advocate who cross examined prosecution witnesses to their satisfaction when after recalling PW2 and PW3. The trial magistrate found that no prejudice would have been suffered by the appellant if witnesses were not recalled as he had been afforded an opportunity to cross examine witnesses adequately. The application to start trial denovo was disallowed.
44. This court finds that the trial magistrate rightly exercised her discretion under Section 200 (3) of the Criminal Procedure Code and she cannot be faulted. The appellant has not identified any prejudice suffered by failure to recall witnesses and mere taking over of conduct of a matter by incoming magistrate is not sufficient reason to exercise discretion under section 200 (3) of the Criminal Procedure Code. Ground 3 fails.

#### **Whether the trial magistrate disregarded the appellant's defence**

45. The appellant testified that he had a domestic problem with his wife PW2 because of extra marital affairs and she threatened to teach him a lesson. That she evicted him from her house and informed his family. That they attempted to reconcile and she settled their differences. He however said the child was couched by his wife after she threatened to take her back to Tanzania. He said he did not defile or sodomise the child. He confirmed PW2 was away on the date of the alleged offence. That she returned after 2 days and the child was in good health and attending school. He said that he was arrested 11 days after the date of the alleged offence. He said that he was not taken for medical examination. He said that they had currently settled their differences and were still in love. He said that when PW2 went to Tanzania for a funeral, he remained in the house with B and RI . He confirmed that PW1 was calling him daddy.
46. The trial magistrate evaluated the appellant's defence in paragraph 1 as well as paragraph 3 both on page 6 where she said that the alleged domestic disagreement between the appellant and PW2 had no connection or link to the charges before court. The trial magistrate found the complainant's testimony that she was defiled by the appellant was consistent and coherent and she remained calm during cross examination and identified the appellant as her aunt's husband.
47. I have perused evidence of PW2 and found that while being cross examined by Mr Egunza Advocate after being recalled, she said she went to her mother's place in Tanzania because she was sick but not because of a domestic quarrel or even for a funeral. PW3 also said the child told her it was the appellant who defiled her. PW1 testified but it did not emerge that she had been couched to fabricate the appellant because of a dispute between PW2 and the appellant. In any case, if the appellant had been fabricated the medical evidence of defilement could not have been positive. PW4 Dr Uba also said the victim knew the perpetrator, told him her assailant threatened her and demanded that she takes a shower to conceal evidence of defilement. This court finds the appellant's defence was exhaustively evaluated and considered.

#### **Whether sentence of life imprisonment was excessive and harsh in the circumstances**

48. Section 8 (2) provides: -

A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.



49. The trial magistrate considered the appellant's mitigation and gravity of the nature of the offence and exercised her discretion to find that the appellant deserved to be imprisoned for life. However, in consideration of the emerging jurisprudence that life sentence should be quantified to be determinate, this court hereby substitutes the said life sentence with 25 years imprisonment. Right of appeal of 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

**Ogwel- Court Assistant**

Mr. Ngiri for Respondent

Appellant present in person

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Court:** Certified copies of the judgment supplied to the Respondent and to Appellant on paying copying charges

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

