Kamau v Republic (Criminal Appeal E003 of 2024)
[2025] KEHC 42 (KLR) (14 January 2025) (Judgment)

Neutral citation: [2025] KEHC 42 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL APPEAL E003 OF 2024

AK NDUNG'U, J

JANUARY 14, 2025

BETWEEN

JOSIAH KAMAU ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From original Conviction and Sentence in Rumuruti SPM Sexual Offences Case No E025 of 2023– E. Kithinji, RM)

JUDGMENT

1. The Appellant, Josiah Kamau , was convicted after trial of defilement contrary to Section 8(1) as read with Section 8 (3) of the *Sexual Offences Act*, No 3 of 2006. The particulars were that on diverse dates between the month of August and December 2022 within Laikipia County, intentionally and unlawfully caused his male organ namely penis to penetrate the vagina of WL a child aged 15 years. On 16/02/2024, he was sentenced to twenty (20) years imprisonment.

2. Being dissatisfied with the conviction and the sentence, he lodged this appeal against both the conviction and the sentence vide a petition of appeal dated 19/02/2024. The conviction and the sentence are being challenged on the following grounds;

    i. The learned magistrate erred convicting him under section 8(3) of the *Sexual Offences Act* which he was not charged under and in respect of an offence that was reported to the police one year later.

    ii. That he was convicted in blatant violation of Article 50 of *the Constitution* thereby leading to a miscarriage of justice.

    iii. The learned magistrate erred convicting him despite the contradictions on age in the charge sheet which was not cured by amendment and so the plea was not unequivocal.

iv. The learned magistrate erred by stating that the complainant was 15 years old in the year 2022 whereas she was not.

v. The learned magistrate erred convicting him when penetration was not proved.

vi. The learned magistrate erred convicting him when paternity of the child was not proved.

vii. The learned magistrate erred relying on provision of section 124 of the *Evidence Act* without stating why the court was satisfied.

viii. The learned magistrate erred by shifting the burden of proof to him and by trying to lower the burden of proof.

ix. The judgment was against the weight of evidence.

x. That the whole judgment is unsafe, a violation of *the Constitution* and tenets of due process in criminal litigation.

3. The appeal was canvassed by way of written submissions.

4. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. See Okeno v Republic [1972] EA 32.

5. A good point to start from would then be a recap of the evidence adduced at the trial court.

6. The evidence before the trial court was as follows. PW1 was the clinical officer. He produced the treatment notes, PRC and P3 form as Pexhibit 1, 2, and 3 respectively on behalf of his colleague who was away. He stated that the complainant had a baby boy born on 20/09/2023 as a result of the act. That the hymen was long broken before. The conclusion was that the complainant had been defiled.

7. On cross examination, he testified that the complainant was attended to when she had already delivered and her child was 18 days old. That the offence was said to have been committed on diverse dates in 2023.

8. PW2 the complainant's mother testified that on 23/09/2023, she took the complainant to hospital to deliver. She gave birth to a baby boy and she asked her who was the father and she mentioned the accused as the father to the child. She testified that she knew the accused from Marura as he would give them grass for the cows.

9. On cross examination, she testified that the accused had gone to her home once and that she did not know that the accused had a wife and children and that there was a meeting at her home between the elders and the accused whereby some money was agreed to be paid. That the complainant had denied once but later said the truth and she did not threaten her to reveal who was responsible for the pregnancy. She testified on re-examination that they did not threaten the complainant with harm to reveal the person responsible.

10. PW3, the complainant testified that she knew the Appellant who was her boyfriend from the month of July 2022 when she was in class 7. That he has a shamba at [Particulars Withheld] and she used to go to his neighbour's shamba for grass and they became friends. They talked on several occasions and they had sexual intercourse which continued until December 2022. He used to give her money. They once met at prison ground where they had sexual intercourse. On December 2022, she started feeling odd and her mother discovered that she was pregnant at 7 months. She inquired who was responsible and she said Josiah Kamau. She delivered on 20/09/2023 but the boy passed on 13/10/2023. The child was

born prematurely and was not breathing properly. She stated that her brother P reported to the police when she was in hospital. She testified that the Appellant went to their home to talk to the elders. Her parents did not threaten her and they did not know that she was in a relationship with the Appellant.

11. She testified on cross examination that she had only one boyfriend, Josiah Kamau since July 2022. The sexual acts took place at prison grounds and there was a river nearby. She used to get there using other routes and she never used the main gate. She maintained that she had a relationship with the Appellant who had even showed her his home and she had not mentioned about the relationship to C, her teacher nor her family. That the doctor said she was 7 months pregnant though she did not have documentation. She testified on re-examination that the child was born on 23/09/2023 prematurely, 2 weeks to delivery.

12. PW4 was the investigating officer. She testified that she was instructed to investigate the case and she contacted P, the complainant's brother who had reported the matter and he informed her that the complainant was in hospital. She interrogated the complainant on 07/10/2023 who recounted how she met Josiah Kamau at his farm and told her that he was a prison officer. He offered her Kshs.500/- and instructed her to see him at 1500hrs. He took her to the prison farm and to a nearby bush where he removed his clothes and hers and proceeded to have sexual intercourse. She informed her that the act was painful and the accused wiped the blood coming out from the complainant with his inner clothes and told her to go home.

13. In December 2022, she met the Appellant at State Lodge and helped him to water the farm and later took her to a nearby bush where he removed her clothes as well his and proceeded to defile her. At this time, she did not experience any pain. In May 2023, she started having strange feelings and she did not see her periods and she realized that she was pregnant. Her mother noticed and warned her not to take any drug that would affect the baby. Her brother P was informed in September 2023 and she informed him that Kamau was responsible. She delivered on 25/09/2023 at Unison Medical Centre and P reported the matter to the police on the same day. She produced the complainant's birth certificate as Pexhibit2.

14. On cross examination, she testified that the complainant was 15 years at the time of commission of the offence and at the time the report was made. That P was not available when she was recording the statement. That she arrested the Appellant and explained to him the reasons for his arrest. That the complainant did not inform her that the baby was born prematurely and she did not conduct any investigation to establish the age of the child at the time of delivery and there was no DNA that was conducted to establish paternity. On re-examination, she testified that when the report was booked, there was no mention of dates but only the month and the year and that they record what the complainant remembers.

15. That was the totality of the evidence by the prosecution. The Appellant was placed on his defence. He took the option to remain silent.

16. In compliance with the legal dictate to re-evaluate the evidence, I have taken time to read and consider the evidence as recorded at the trial court. In doing so, I have borne in mind that I neither saw nor heard the witnesses testify and I have given due allowance for that fact.

17. In addition, I have had due regard to the applicable statutory provisions, learned submissions by counsel and the case law cited.

18. It is trite that for the charge of defilement to stand, the Prosecution must prove the age of the victim (must be a minor), penetration and a clear identification of the perpetrator. These are the ingredients of the offence established at Section 8(1) of the *Sexual Offences Act* No. 3 2006.

19. Having established the ingredients of the charge, the issue for determination is whether the prosecution achieved the legal threshold required in prove of the charge. Based on the finding thereon, the court has to determine the appropriateness of the sentence imposed.

20. Proof of age is important in a sexual offense. In Kaingu Kasomo vs. Republic, Criminal Appeal No. 504 of 2010 (UR), the Court of Appeal stated that:

> " Age of the victim of sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim."

21. In the present appeal, the Appellant submitted that the age was not proved. He further submitted that the charge sheet was defective as he was charged under Section 8(2) of the *Sexual Offences Act* whereas the particulars indicated that the complainant was 15 years old. The charge sheet was not amended and the court proceeded to convict him under Section 8(3) which section he was not charged with.

22. The Appellant was charged under Section 8(1)(2) of the *Sexual Offences Act*. In the particulars, it was indicated that the child was 15 years old. The trial court while convicting the Appellant convicted him under Section 8(3) and he was sentenced to twenty (20) years imprisonment as provided under Section 8(3).

23. As to whether the charge sheet was defective, it has been held that a court must consider the defects in a charge from a two-step test. First is to determine whether the charge is defective and if so, whether such defect can be remedied. This was stated by the Court of Appeal in Peter Ngure Mwangi v Republic [2014] eKLR thus:-

> " On the issue of a defective charge sheet, there are two limbs to it. The first one deals with the issue as to whether the charge sheet is indeed defective, whereas the second one deals with the issue as to whether even if a charge sheet is defective, that defect is curable or not."

24. The Court of Appeal gave guidance on determining whether a defect in a charge is fatal in Benard Ombuna v Republic [2019] eKLR as follows:-

> " In a nutshell, the test of whether a charge sheet is fatally defective is substantive rather than formalistic. Of relevance is whether a defect on the charge sheet prejudiced the appellant to the extent that he was not aware of or at least he was confused with respect to the nature of the charges preferred against him and as a result, he was not able to put up an appropriate defence."

25. Section 382 of the Criminal Procedure Code provides that unless an error in the judgment has occasioned a failure of justice, the order or sentence of a court shall not be reversed. The Section provides as follows:

> " Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

26. In view of provision of Section 382 of CPC, though the charge had an error in that a wrong section was quoted in the charge sheet the evidence before trial court supported the offence under the section with which the appellant was convicted. Throughout the proceedings, it was clear to the Appellant that he faced a charge of defiling a minor who was in the bracket of Section 8(3) of the *Sexual Offences Act* and no prejudice was occasioned to him by the defect complained of. It is also noteworthy that the Appellant was represented by legal counsel at trial and no objections were raised as regards the charge sheet. To raise the objection at the appellate stage is an ambush on the prosecution and offends the tenets of a fair trial. It is this court's finding that the fact that the wrong section of the law was cited did not occasion a failure of justice to the Appellant.

27. As to whether the age of the complainant was proved, counsel argued that PW1 testified that the complainant was born on 20/05/2003, PW2 testified that the complainant was 15 years whereas the birth certificate indicated that she was born on 27/05/2008 and therefore at the time of the offence, she might have been 14 years and some months yet the trial court adjudged that she was 15 years and it is not clear how the trial court came up with that age without age assessment report.

28. The Respondent's counsel submitted that age was proved in that the birth certificate revealed that she was 14 years and three months old at the time of the commission of the offence and though this differed from what was indicated in the charge sheet, the same was not significant to impact the outcome as the victim was still a minor at the time of the offence. He further submitted that PW2 was accurate when she said that the complainant was 15 years old as at the time she was testifying, the complainant was actually 15 years and 6 months.

29. It is trite law that in defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may be proved by birth certificate, the victim's parents or guardian and by observation and common sense (see the case of Thomas Mwambu Wenyi v Republic Criminal Appeal NO. 21 OF 2015 [2017]).

30. The birth certificate produced in court shows that the complainant was born on 27/08/2008. The offence is said to have been committed on diverse dates between August 2022 and December 2022. It therefore follows that the complainant was 14 and some months old at the time of the commission of the offence and hence a minor for the purpose of *Sexual Offences Act*. The trial court seems to have rounded up the years to 15 which cannot be held to be entirely wrong since the victim was already over 14 years. The saving grace either way is that the victim's age was within the bracket of between 12 and 15 years which falls under the provision of section 8(3) of the *Sexual Offences Act*. The birth certificate duly exhibited is clear on the age of the complainant and removes any doubts thereon. It is therefore my view that the age was proved by the birth certificate.

31. On penetration, it is submitted for the Appellant that penetration was not proved on account that the date when the offence was committed was doubtful as the charge sheet stated diverse dates, the exhibits also provided conflicting dates, the victim stated it was in July 2022 till December 2022, PW4 said it was in August 2022 and in December 2022, the report made had no dates. The place where the incident allegedly took place is also doubtful as three places were mentioned. That the clinical officer could not provide evidence of penetration and there lacked medical evidence to corroborate the fact of defilement as the report was made a year after the alleged incident. That the testimony of the victim that 'had sexual intercourse' was uncertain as sexual intercourse can mean other things. That the terms

sexual intercourse were found to be insufficient in the case of Mark Makoani Musyoka vs R (2020) eKLR and Julius Kioko Kivuva vs R (2015) eKLR.

32. It is urged that the court was wrong to state that penetration was proved through the conduct of the accused visiting the victim's family. The court further ruled complainant's pregnancy and delivery of a baby shows that there was penetration whereas there was no medical evidence on pregnancy or DNA report on paternity. That the child was born at 7 months prematurely on September 2023 meaning that conception must have been in February 2023 which is outside the period in the charge sheet. That it was apparent that paternity be established especially due to presumed dates of the incident and lack of medical corroboration. That the prosecution relied on the pregnancy to prove penetration yet the Appellant was not charged with occasioning pregnancy and there ought to have been medical evidence on pregnancy and paternity. It is argued that the court convicted the Appellant not because it believed the complainant's testimony but on conception, pregnancy and birth of a child notwithstanding non-availability of evidence as to pregnancy or DNA evidence to prove paternity.

33. Respondent on the other hand argued that what was before the court was the issue of defilement and not paternity and it is well established that medical test is not necessary under Section 36 of the *Sexual Offences Act*. That DNA evidence is not necessary to prove a case of defilement.

34. The trial court while convicting the Appellant found corroboration of penetration in that there was evidence of a child born out of the defilement, through the PRC and P3 form and treatment note and through the evidence of PW1, 2, 3 and 4. That penetration was proved by the fact that the Appellant visited the complainant's home in a view to solve the matter.

35. It is trite that defilement can be proved not only by medical evidence but also by way of oral and circumstantial evidence. In Aml v Republic [2012] eKLR (Mombasa), this Court upheld the view that:

> " The fact of rape or defilement is not proved by way of a DNA test but by way of evidence."

36. This was further affirmed in the case of Kassim Ali v Republic Cr. App. No. 84 of 2005 (Mombasa) where the court stated:

> " ... [The] absence of medical examination to support the fact of rape is not decisive as the fact of rape can be proved by the oral evidence of a victim of rape or by circumstantial evidence."

37. As regards to paternity, the court in Evans Wanjala Wanyonyi v R {2019} eKLR stated thus:

> " An essential ingredient in the offence of defilement is penetration and not impregnation."

38. This was reaffirmed in the case of Williamson Sewa Mbwanga v R {2016} EKLR where the court stated:

> " It is patiently clear to us that whilst paternity of PM's child may prove that the father of the child had defined PM, that is not the only evidence by which defilement of PM can be proved. The fact, as happens in many cases, that a pregnancy does not result from conduct that would otherwise constitute a sexual offence does not matter that the sexual offence has not been connected. In this case, there does not have to be a pregnancy to prove defilement. A DNA test of the appellant would at most determine whether he was the father of PM's child, which is a defilement question from whether the appellant had defiled PM."

39. So, what mattered is whether there was sufficient oral evidence or circumstantial evidence to link the Appellant to the offence. The complainant herself explained to court how she met the Appellant

and they became friends. She testified that they had sexual intercourse and this continued even in December. As the Appellant counsel submitted, the complainant did not explain in graphic details what she meant by sexual intercourse.

40. This submission finds traction in law. A victim of a sexual offence must describe the specifics of the act of penetration. This was the finding of this court in IMW V Republic {2024} KEHC 15434 (KLR) citing the decision in Julius Kioko Kivuva v Republic [2015]eKLR.

41. In Julius Kioko Kivuva v Republic [2015] eKLR the court held as follows;

> " The complainant (PW1) testified as follows in this regard:
>
> "The accused removed my pant and my skirt. I also had a black biker which he also removed. He did not use a condom. We had sex twice that night. We slept upto 9.00 a.m the following day"
>
> PW1's testimony in this regard was not specific as to the act of penetration; and her evidence of having sex does not necessarily prove that penetration took place, in the absence of further evidence and details as to what actually happened in the act of having that sex. Evidence of sensory details, such as what a victim heard, saw, felt, and even smelled, is highly relevant evidence to prove the element of penetration, as a victim's testimony is the best way to establish this element in most cases. The specificity of this category of evidence, even though it may be traumatic, strengthens the credibility of any witness's testimony, and is particularly powerful when the ability to prove a charge rests with the victim's testimony and credibility as it does in this appeal."

42. A distinction must be drawn, however, between the facts as they emerge in this case and the obtaining evidence in the decision aforesaid. In this particular appeal, there is evidence corroborating the evidence of the complainant on penetration in that the complainant became pregnant out of the act and which act happened over a considerable period of time. There is further evidence that indeed the Appellant visited the home of the complainant where compensation for the act was discussed. Looked at in totality, this is cogent circumstantial evidence that irresistibly points at the guilt of the Appellant. It does not help the Appellant's cause that he opted not to challenge this evidence when the opportunity provided by law arose.

43. True, the burden of proof in criminal cases lies on the prosecution. However, once the prosecution discharges the legal burden, the defence must rise to the occasion and dislodge such evidence in the absence of which the evidence by the prosecution remains unchallenged and based on the strength, clarity and consistency of the evidence, a safe conviction becomes a natural consequence. I hold this view well aware of and cognizant of the legal safeguards afforded an accused person whereby he bears no burden to prove his innocence.

44. I am fortified in that finding by the findings of Mutuku J in Wayu Omar Dololo v Republic [2014] eKLR who confronted by a similar set of facts held as follows;

> " The trial magistrate took judicial notice that a pregnancy results from a sexual activity and as such found penetration proved. On my part, I have examined the evidence carefully. At the time of examination by a doctor, the complainant was heavy with child and the pregnancy was visible as observed by the trial court. Indeed at the time of hearing the complainant said she was nine months pregnant. A pregnancy is a biological condition that results from a sexual activity unless there is evidence that there was artificial implanting of fertilized ova into the uterus of a female human being. The trial magistrate had the opportunity to observe

the demeanour of the complainant as she testified. He was impressed by her demeanour and observed so in his judgement.

I have considered that under the proviso to section 124 of the *Evidence Act*, evidence of a single sexual offence victim does not require corroboration and a court can convict on such evidence upon recording reasons for believing such evidence. The trial court recorded the reasons why it believed the evidence of the complainant.

I am satisfied that evidence of pregnancy of the complainant is sufficient proof beyond reasonable doubt that penetration, whether partial or complete, took place. I am also satisfied that the appellant is the person who made the complainant pregnant therefore proving beyond reasonable doubt that defilement took place. In arriving at this conclusion I have considered that the relationship between the complainant and the appellant is not a one-off chance meeting but a continued relationship of boyfriend and girlfriend in which they engaged in sexual activity. The appellant even taught the complainant how to ride his motor cycle. I am satisfied that it was a continuous relationship from late 2010 to June 2012 when she discovered she had become pregnant and the appellant refused to take responsibility. Evidence shows that the complainant was hoping to be married by the appellant after completing school.

I have considered the defence of the appellant. He generally denied knowing the complainant or defiling her. His witnesses introduced evidence that the appellant did not even mention or cross examine the complainant or her father on. The appellant had no duty to prove anything but I wonder why he would fail to cross examine on issues that would show that it was not him but another person, either B or O, people named by his witnesses, who defiled the complainant. All that was required of the appellant was to raise doubts in the court's mind that he was not the one responsible but I find this was not done leaving prosecution evidence uncontroverted".

45. For emphasis, the corroborative evidence in this case is that a pregnancy arose from the act. Secondly, PW2 and PW3 testified that the Appellant visited their home with a view of settling the matter. He met with the elders and some money was to be paid. It is not clear from their evidence whether the said money was paid. This evidence was not rebutted either during cross examination or in defence evidence. The Appellant did not dispute this during cross examination of the prosecution witnesses. He did not challenge the fact when he was given a chance to defend himself as he chose to remain silent.

46. The trial court properly appreciated the law in that besides finding that there was corroboration of the evidence on penetration, it made a finding that a conviction was achievable on the evidence of the victim alone under Section 124 of the *evidence Act*.

47. As to identity, counsel submitted that the suspect was not described or identified when the first report was made and when he was arrested and that P and the victim were not present to pin point the correct suspect. Further, the prosecution failed to prove that the Appellant was indeed K as there was no identification documentation or employer evidence and the prosecution failed to place him at Kahari area or prison ground.

48. The Respondent counsel on the other hand submitted that the complainant knew the Appellant and stated that he was her boyfriend and provided a clear description of where the Appellant lived and stated that they had known each other for a while. That the evidence of recognition was not dislodged by the Appellant during cross examination.

49. The trial court also noted that identification was proper as the court noted that the complainant referred to the accused as K throughout the trial. The court also found the complainant to be truthful in accordance with section 124 of the *Evidence Act*. The court noted her demeanour in that she clearly knew the Appellant and she walked to the accused dock before being escorted to the witness box. Indeed, the complainant referred to the Appellant as K throughout the trial. The Appellant did not during cross examination of the witnesses deny the fact that he was K. Further, no evidence was led by the defence at the trial to demonstrate and establish a foundation of possible motive, ill will or malice against the Appellant that would have led the Complainant to frame the Appellant with the charges before the court. It is my view that the identity of the Appellant as the perpetrator of the offence was proved.

50. Indeed, the trial court properly appreciated the law in that it made a finding that a conviction was achievable on the evidence of the victim alone under Section 124 of the *evidence Act*. Citing the applicable law and applying it to this case, the trial court stated;

> " PW3, the complainant testified in court that, ''I know the accused person. He became my boyfriend starting July 2022 when I was in class 7''. The court finds by the direct evidence through testimony by PW3, the accused person was indeed well known to her. She called him through her testimony, 'K'. While there was no other witness of the acts of defilement, the court is well guided by Section 124 of the *Evidence Act*, Cap 80. The proviso to Section 124 *Evidence Act* is as follows:-
>
> ''Notwithstanding the provisions the provisions of Section 19 of the *Oaths and Statutory Declarations Act* (Cap 15), where the evidence of the alleged victim is admitted in accordance with that Section on behalf of the prosecution against any person for an offence, the accused shall not be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:
>
> Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.''
>
> The court finds the complainant's evidence truthful and to the extent that it was the accused person who defiled her.
>
> The court also noted the demeanour of the complainant when she came into court for her testimony on 29/11/2023. She clearly knew the accused and she almost walked to the accused' dock and was escorted/shown to the witness box.

51. The Appellant counsel argued that the evidence of the complainant was not admitted in accordance with section 19 of the Oaths and Declaration Act. The complainant testified on November 2023 and therefore she was 15 years and a few months old at the time of testifying. The court in George Kioko Nzioka v Republic [2020] eKLR, while being guided by the case of Maripett Loonkomok v Republic [2016] eKLR where in Maripett reviewed cases going back to Kibageny Arap Kolil v Republic [1959] EA 82 which held that:

> " There is no definition in the Oaths and Statutory Declaration Ordinance of the expression 'child of tender years' for the purpose of Section 19. But we take it to mean, in the absence of special circumstances, any child of any age, or apparent age, of under fourteen years."

52. See also MK versus Republic [2015] eKLR, where the Court termed as unnecessary voir dire examination conducted on a child aged 15 years by the trial court. It was held that voir dire examination is done where a child witness is a child of tender years. The Court of Appeal concluded by saying that a child of tender years is one who is fourteen (14) years and below.

53. Though the appellant expressed dissatisfaction with both the conviction and sentence imposed by the trial court, no submissions were made in that regard. My reading of the record shows that the court considered the applicable law and relevant factors in sentencing. There are no grounds upon which this court can interfere with the sentence. The sentence imposed was legal.

54. On the whole, and upon my independent evaluation of the evidence adduced in support of the charge, am satisfied that the prosecution proved its case to the required degree and the conviction was safe. As the sentence was not challenged, the result is that the appeal herein fails and is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF JANUARY 2025

A.K. NDUNG'U

JUDGE