



**Njuguna v Republic (Criminal Appeal 87 of 2018)
[2025] KEHC 315 (KLR) (16 January 2025) (Directions)**

Neutral citation: [2025] KEHC 315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL APPEAL 87 OF 2018
AK NDUNG’U, J
JANUARY 16, 2025**

BETWEEN

FRANCIS NJUGUNA APPELLANT

AND

REPUBLIC RESPONDENT

*(From original Conviction and Sentence in Nanyuki
CM Sexual Offences Case No 21 of 2016– L. Mutai, CM)*

DIRECTIONS

1. In the course of writing judgement in this appeal, it has come to my attention that the certified typed proceedings provided herein have glaring ambiguities, faults/shortcomings that are a clear impediment to this court’s exercise of its duty as a first appellate court. There are instances where the proceedings are unintelligible and the combination of words used at some instances give no meaning in the English language. I have noted at least one incomplete sentence.
2. An excerpt picked from page 21 of the certified proceedings is a clear example of the untenable state of the proceedings. The trial court recorded as follows;

“ Court to witness in Kiswahili:

I am Nicole Chebet. I am aged 6 years. Mum is outside the court. My school is.....primary school and my teacher is Carol. I go to Sunday school during the church day. I do not know the meaning of the bible. I know I am in a court of law. I do not know what goes on.

Court:

Upon hearing the child-subject I am satisfied that she under named (sic) of sufficient knowledge to understand the meaning of oath. To that fine unsworn evidence.



PW1 Minor sworn states in Kiswahili”

3. I have perused the handwritten record and I am unable to decipher the handwriting in order to verify what the court recorded and meant.
4. The record shows that the proceedings of the trial court were certified on 3/11/23 long after the trial magistrate (L. Mutai, CM) had left Nanyuki Law Courts station.
5. Having perused the handwritten proceedings, it is obvious that the trial magistrate’s handwriting is not an easy one to decipher. It is probable that the typist who prepared the proceedings faced this challenge leading to the obtaining state of affairs.
6. While I cannot tell from the signature the officer who certified the proceedings, it is obvious that there was a serious dereliction of duty on the part of the certifying officer in failing to ensure that what was certified as the true copy proceedings was intelligible. Where in doubt, no effort ought to have been spared including sending the file to the trial magistrate for certification.
7. Trial magistrates and all officers of court must be reminded that a record of proceedings is not just a fleeting narrative but a foundation stone upon which justice is served, first at trial, and further, on subsequent appeals. The same must be held as sacrosanct and any responsibility to prepare proceedings must be executed with utmost diligence and circumspection. Anything contrary to this is a recipe for injustice and embarrassing outcomes in trials and in appeals.
8. In the prevailing circumstances, proceeding with this appeal on the basis of proceedings provided would amount to a travesty of justice on the parties.
9. So, which way the appeal? It is not possible to do justice in the matter without clear proceedings which the court understands. The direction that commends itself is that the Deputy registrar of this court places the original and typed proceedings before the trial magistrate who shall make the necessary certification that the proceedings as typed are a true reflection of the proceedings taken in court. This, to include correction of all typographical errors in the picked out excerpt, the entire proceedings and the judgement.
10. The inconvenience visited on the parties, and particularly the Appellant, who will have to wait a little longer to get the outcome of his appeal is highly regretted. To expedite the appeal, such certified proceedings be filed within 21 days hereof and served by the Deputy registrar on the parties who shall be at liberty to file such further and/or supplementary submissions as they may deem necessary.
11. This ruling/order be served on the Deputy Registrar of this court who shall serve a copy of the same in addition to the original and typed proceedings on Hon. L. Mutai, CM, for compliance.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JANUARY 2025.

A.K. NDUNG’U

JUDGE

