



REPUBLIC OF KENYA



KENYA LAW
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**Mwangala v Republic (Criminal Appeal E055 of 2023)
[2025] KEHC 8874 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 8874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E055 OF 2023
AN ONGERI, J
FEBRUARY 24, 2025**

BETWEEN

BRYSON MWANYAGE MWANGALA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. A. M. Obura (CM) in
Voi CMCC Case No. E008 of 2023 delivered on 29th September 2023)*

JUDGMENT

1. The Appellant was convicted with the offence of defilement contrary to Section 3(1) as read with Section 8(3) of the [Sexual Offences Act](#) No. 3 of 2006 and he was sentenced to twenty (20) years imprisonment.
2. The particulars of the charge were that on 6th February 2023 at around 1200hours at Maungu, Voi Subcounty within Taita Taveta County, the Appellant intentionally caused his penis to penetrate the vagina of MMF, a child of 15 years.
3. The prosecution evidence in summary was that on the material day, the complainant was at her home cooking when the Appellant went there and upon confirming that she was alone, led her to a makuti house and had sex with her.
4. The Appellant later gave the complainant undisclosed medication and kept inquiring whether she had gone to hospital.
5. The complainant's mother became suspicious and took the complainant to hospital where it was confirmed that the complainant was a victim of habitual sex.
6. The Appellant vehemently denied the charge and called a witness who said he was arrested while at work



7. The trial court found the Appellant guilty as charged and sentenced him to twenty (20) years imprisonment.
8. The Appellant has appealed to this court on the following grounds:-
 - i. That he pleaded Not Guilty to the offence.
 - ii. That the learned trial Magistrate erred in law and fact by failing to find that the complainant's age was not proved as required by law.
 - iii. That the learned trial Magistrate erred in law and in facts by failing to appreciate that the Appellant's identification was not positive.
 - iv. That the learned trial Magistrate erred in law and in facts by failing to appreciate that penetration was not positively established.
 - v. That the learned trial Magistrate erred in law and in fact by failing to find that the medical evidence adduced did not corroborate the charge as stated.
 - vi. That the sentence imposed was harsh and excessive since it was applied in mandatory terms as provided by the statute.
 1. The parties filed written submissions as follows:- the appellant did not file submissions.
 2. The prosecution however submitted that PW1, the complainant testified that she was born on 23/3/2007. The incident happened on 6/2/2023 when she was 15 years old. Her birth certificate was produced that proved her age.
 3. On penetration the prosecution argued that PW1 testified that she was home preparing food when the appellant who is known to her asked her to follow him to a hotel. They entered the hotel and the appellant proceeded to have unprotected sex with her. On Sunday while with her cousin J they met with the appellant who gave PW1 P2 pills to take in order to avoid pregnancy. PW4 Dr Nyawa Joto testified that PW1 was examined and it was noted that her hymen was broken. The Complainants testimony was supported by P3 forms, Scan and Lab tests that proved that penetration had occurred.
12. On identification PW1 positively identified the appellant as he was known to her. PW1 had previously seen him working at a hardware and used to see him visit her aunt Jackline. The incident happened at around 12 noon and visibility was clear and unhindered. It was the prosecution position that they proved the case beyond reasonable doubt and thus the appeal herein should be dismissed.
13. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and to arrive at its own conclusion whether to support the findings of the trial court. The Court of Appeal in *Okeno v Republic* [1972] EA 32 held that:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v Republic* [1957] EA. (336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M Ruwala v R* [1957] EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the



trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post* [1958] EA 424.”

14. The issues for determination are as follows;
 - i. Whether the prosecution proved the guilt of the appellant to the required standard.
 - ii. Whether the sentence imposed on the appellant is too harsh.
15. On the issue as to whether the prosecution proved the guilt of the appellant to the required standard, the law is clear that the prosecution must prove the elements of the offence of defilement.
16. The ingredients of the offence of defilement were well stated in the case of *Dominic Kibet Mwareng v Republic* [2013] eKLR, by Ndolo J. as follows:

“The critical ingredients forming the offence of defilement are;

 - i. age of the complainant,
 - ii. Proof of penetration
 - iii. Positive identification of the assailant.”
17. I find that the Appellant was properly identified since he was well known by the complainant and the witnesses. The incident happened at around 12 noon and visibility was clear and unhindered.
18. There is evidence of penetration adduced through the medical documents. PW4 Dr Nyawa Joto testified that the complainant was examined and it was noted that her hymen was broken. The Complainant's testimony was supported by P3 forms, Scan and Lab tests that proved that penetration had occurred.
19. The age of the complainant was proved by the age assessment report which confirmed that she was 15 years old at the material time. The complainant testified that she was born on 23/3/2007. The incident happened on 6/2/2023 when she was 15 years old.
20. The appeal lacks in merit and the same is accordingly dismissed.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF FEBRUARY 2025 VIRTUALLY VIA MT AT VOL.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistant: Maina

The Applicant present at Manyani

