



REPUBLIC OF KENYA



KENYA LAW
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**Wangari v Republic (Criminal Appeal 111 of 2023)
[2025] KEHC 3160 (KLR) (Crim) (4 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 111 OF 2023
KW KIARIE, J
MARCH 4, 2025**

BETWEEN

DANIEL MUCHAI WANGARI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E047 of 2021 of the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa–Senior Principal Magistrate)

JUDGMENT

1. Daniel Muchai Wangari, the appellant in this case, was convicted of the offence of rape contrary to section 3(1) read with section 3(3) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offences were that on diverse dates between February 2021 and the 5th day of May 2021 at Nyandarua South Sub-County within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of R.N.G., without her consent.
3. The appellant was sentenced to serve ten years' imprisonment in count. He was aggrieved and has appealed against both conviction and sentence. He was in person and raised grounds of appeal as follows:
 - a. The learned trial magistrate erred in law and fact by failing to appreciate that the prosecution had failed to prove its case beyond reasonable doubt.
 - b. The learned trial magistrate directed himself in law by shifting the onus of proof from the prosecution to the appellant contrary to law.



- c. That the learned trial magistrate erred in law and fact in failing to consider and failed to consider and or give reasons why he disregarded the appellant's defence.
 - d. That the learned trial magistrate erred in both law and fact by denying the defence witnesses to testify, yet he was present in court.
 - e. That the learned trial magistrate erred in both law and fact by convicting the appellant yet failed to appreciate that the DNA result exonerated the appellant.
 - f. The learned trial magistrate erred in law by denying the appellant the right to file his final submissions, contravening his constitutional rights to a fair trial.
4. The state conceded to the appeal through M/S. Odero L.A. Vena, learned counsel, on the following grounds:
- a. The trial court failed to inquire into the complainant's competency to testify and to test her ability to be rational, reliable, and coherent in her account of events.
 - b. The complainant's mental condition affected her ability to recollect, comprehend and narrate events, leading to inconsistencies and contradictions on the dates she was allegedly raped hence implying the appellant was responsible for her pregnancy.
 - c. Lack of corroboration of the complainant's allegations whereby the medical evidence availed failed to establish a nexus between the appellant and the alleged offence of raping the complainant.
 - d. Misapplication of the law whereby the trial court improperly applied section 124 of the Evidence Act and stated that it had every reason to believe the complainant without additional safeguards.
 - e. Potential miscarriage of justice as the conviction cannot be summarized as safe in light of the weak evidence.
5. This is a first appellate court. As expected, I have analysed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
6. The ingredients of the offence of rape are set out in section 3 of the Sexual Offences Act, which states as follows:
- A person commits the offence termed rape if—
- (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
 - (b) the other person does not consent to the penetration; or
 - (c) the consent is obtained by force or by means of threats or intimidation of any kind.
7. R.N.G (PW1) is the complainant in this case. Her evidence was that on the 5th day of May 2021, the appellant went to collect his clothes, which he had left for repairs by her mother, who was a tailor. He locked the house when he realised nobody else was in the homestead. He then took her to the bedroom, where he raped her. He had raped her in February 2021 but did not indicate where this happened. She was incoherent as to who sired the child she gave birth to after the alleged rape.



8. Though she claimed the appellant was the father of the child, her evidence was that at the time of the alleged rape, the pregnancy was “small”. She informed the court that she gave birth at the end of May, though later, she changed and indicated that it was in June 2021.
9. For argument’s sake, assuming she became pregnant in February 2021 equates to only four months. The standard human gestation period is nine months. Given that there is no evidence suggesting she gave birth to a premature child, we can only take her at her word. This was a glaring lacuna which the learned trial magistrate ought to have seen and addressed.
10. The DNA report indicates that the appellant did not father the complainant’s child, whom she alleged was the result of rape. Paternity becomes relevant evidence when it is claimed that the child’s birth stemmed from the action complained of.
11. The investigating officer testified that the complainant could not express herself well, which ought to have necessitated using an intermediary to ensure no miscarriage of justice occurred.
12. As captured in the P3 form, the medical examination does not reveal any evidence that could corroborate the complainant’s evidence. The external genitalia were normal, with old tears of the hymen.
13. The prosecution evidence on record did not establish a prima facie case against the appellant. I agree with the reasons the learned prosecution counsel advanced to concede to the appeal.
14. The conviction is quashed, and the sentence is set aside. The appellant is set at liberty unless otherwise lawfully detained.

DELIVERED AND SIGNED AT NYANDARUA THIS 4TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

