



**JWM v Republic (Criminal Appeal 115 of 2023)
[2025] KEHC 6833 (KLR) (Crim) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 115 OF 2023**

KW KIARIE, J

MAY 21, 2025

BETWEEN

JWM APPELLANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in S.O. Cases No.9 & 10 of 2017 of the
Principal Magistrate's Court at Engineer by Hon. G.N. Opakasi– Resident Magistrate)*

JUDGMENT

1. In the Sexual Offence case number 9 of 2017, JWM, the appellant herein, was convicted of the offence of incest contrary to section 20 (1) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence were that on diverse dates between the 2nd day of January 2017 and the 5th day of February 2017 in Kipipiri Sub County within Nyandarua County, being a male person, caused his penis to penetrate the vagina of EWW, a female child aged ten years, who was to his knowledge his daughter.
3. In the Sexual Offence case number 10 of 2017, the appellant herein was convicted of the offence of incest contrary to section 20 (1) of the *Sexual Offences Act* No. 3 of 2006.
4. The particulars of the offence were that on diverse dates between the 2nd day of January 2017 and the 5th day of February 2017 in Kipipiri Sub County within Nyandarua County, being a male person, caused his penis to penetrate the vagina of LMW, a female child aged twelve years, who was to his knowledge his daughter.
5. The appellant was sentenced to life imprisonment. He has appealed against both conviction and sentence. He was in person and raised the following grounds of appeal:



- a. The learned magistrate erred in law and fact by holding that there was evidence of penetration on the complainant while the medical evidence adduced does not support the same.
 - b. The learned magistrate did not consider the submissions tendered before the court, that PW 2 had fabricated the case following a family disagreement; this was evident from PW 2's evidence. The Appellant's defence was also left unconsidered.
 - c. The learned magistrate erred in law and fact by relying on the wrong principles and giving a sentence.
6. The trial in sexual offence cases 9 and 10 of 2017 was handled very poorly. The two complaints were expected to be tried in one case. However, the rationale for trying what would have constituted two counts separately was not explained. The application to have the evidence applied in sexual offence number 10 of 2017 did not resolve the confusion.
7. When I was about to write the judgment, I came across a judgment by Judge Mwongo over the same matters. The judgment in criminal appeal No. 40 of 2017 was delivered on the 29th day of October 2020. The appeal applied to sexual offence cases 9 and 10 of 2017 from the Engineer SRM Court. He dismissed the appeals, rendering this court functus officio.
8. I am disturbed, however, by the following issues:
- a. The procedure adopted by the learned trial magistrate is unknown to criminal trials; she ordered evidence in one file to apply to the other instead of directing the two cases to be consolidated and tried together.
 - b. The complainant's siblings, aged 16 and 13, were not called as witnesses, yet they were present at the material times. No explanation was tendered.
 - c. A lady referred to as Wandung'u did not testify, yet she featured prominently in the prosecution's evidence. No explanation was offered.
 - d. The appellant and his wife had serious disagreements, leading to their separation. When the appellant contended that he was framed, this issue had to be addressed.
9. I therefore strike out the appeal. If need be, the appellant is advised to file an appeal to the Court of Appeal.

DELIVERED AND SIGNED AT NYANDARUA THIS 21ST DAY OF MAY 2025.

KIARIE WAWERU KIARIE

JUDGE

