



**Kipruto v Republic (Criminal Appeal E072 of 2022)  
[2025] KEHC 5784 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5784 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL APPEAL E072 OF 2022**

**JM NANG'EA, J**

**MAY 6, 2025**

**BETWEEN**

**ERICK MARITIM KIPRUTO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Judgment (Being an appeal from the Judgment / decision of the Chief Magistrate's Court at Molo (Hon. E. Soita -SRM ) delivered on 18/10/2022 in Sexual Offence Case No. E102 of 2022)*

**JUDGMENT**

1. The appellant is dissatisfied with the said judgement and/or sentence of the above stated lower court before which he was charged with a main offence of Defilement contrary to section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* No. 3 of 2006. In the alternative the appellant was charged with committing an indecent act with a child contrary to Section 11(1) of the same Act.
2. The particulars of the main charge are that on 22 /09/2022 at Boror Location, Rongai Sub County, within Nakuru County the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of MC ("the Complainant"), a child aged 13 years. It is alleged in relation to the alternative charge that on the same date and at the same place he intentionally and unlawfully touched the complainant's vagina using his penis.
3. The appellant is recorded to have replied to the main charge thus; "ukweli/true", whereupon he was warned that he would be imprisoned for 20 years on a plea of guilty. The matter was thereafter fixed for presentation of the full facts of the case on 28/09/2022, but the facts were eventually read out on 30/09/2022.
4. The facts of the case as narrated by the prosecutor were that on 22/09/2022 at 1800 hours the complainant was sent by her mother to deliver milk to their neighbour. She met with Appellant on her way who lured her into his house where they spent the night and had sexual intercourse three



- times. The following morning the complainant went to her grandmother's home, fearing to face her mother. Her mother did turn up at the complainant's grandmother's home where she found her. The complainant is said to have related what transpired between her and the Appellant after which the matter was reported to Rongai Police Station. On 23/09/2002 the complainant led police officers to the Appellant's home where he was found, arrested and charged.
5. The complainant was taken to Rongai Health Centre for medical examination and the medical report was prepared. The report showed inflammation and redness of the genitalia. Her vagina was bruised internally and tender on palpation. The hymen was broken but the wound was old. The medical report among other medical records was tendered and admitted in evidence.
  6. Police investigations showed that the complainant was 13 years old going by her Clinic Card exhibited indicating her birthday as 07/03/2009.
  7. The Appellant's response to the facts was similar, "Ukweli/true". The trial court then entered plea of guilty in respect of the main charge, and when called upon to make a statement in mitigation, the Appellant indicated that he had nothing to say. He was again warned of the consequence of pleading guilty. A pre-sentence report was ordered for and the case scheduled for sentencing. On 18/10/2022 the Pre-Sentence Report was availed to the court and the Appellant sought a non-custodial sentence. After considering the Appellant's mitigation statement; the nature of the offence and the age of the complainant and the pre-sentence report filed by the Probation Officer, the lower court meted out the sentence of 20 years imprisonment against the Appellant and gave him 14 days to prefer appeal.
  8. By an undated "Petition Of Appeal" filed herein the Appeals both conviction and sentence on grounds that may be condensed into three as follows:
    - a. That the learned trial magistrate erred in law and fact by convicting the Appellant despite medical evidence not proving defilement.
    - b. That the learned trial magistrate erred in law and fact by failing to find that penetration was not proven beyond reasonable doubt.
    - c. That the learned trial magistrate erred in law and fact by failing to find that the age of the complainant and identity of the perpetrator were not established beyond reasonable doubt.
  9. It can be deduced that the Appellant is generally contending that his conviction was against the weight of evidence.
  10. It is trite law that a first appellate court has the duty of re-assessing or re-evaluating the evidence presented before the trial court and arrive at its own conclusions on both matters of fact and law while being mindful of the fact that unlike the lower court it did not have the advantage of watching the demeanour of witnesses {( see the case of Okeno vs Republic ( 1972) EA 32}.
  11. Only the learned Counsel for the Respondent filed submissions which I have perused together with the Appeal and the record of the lower court. She submits that the Appellant was lawfully convicted and sentenced. Counsel places reliance on section 348 of the [Criminal Procedure Code](#) which provides;

"No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except to the extent and legality of the sentence."
  12. The court is further told that the trial court duly complied with the guidelines given in Adan vs Republic (1973) EA LR 445 with regard to the manner in which plea taking should be conducted.



According to Counsel, the Appellant was given a chance to reply and was warned of the risk of pleading guilty.

13. Contrary to the Appellant's claims in his appeal, Ms Sang points out that medical evidence proffered prove penetration owing to the noted injuries in the complainant's vagina.
14. The sentence imposed against the Appellant is also said to be lawful as it is the mandatory one prescribed by section 8 (3) of the *Sexual Offences Act* No. 3 of 2006.
15. Indeed in law as submitted by the prosecution Counsel one can only appeal sentence where the conviction was on a plea of guilty by dint of the provisions of section 348 of the *Criminal Procedure Code* set out supra.
16. The above legal position was underscored in *Olel vs Republic* (1989) KLR 444 in which it was held that;

“where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the *Criminal Procedure Code* does not merely limit the right of appeal in such cases but bars it completely.”
17. The Court of Appeal in *Alexander Lukoye Malika vs Republic* (2015) eKLR further stated the law as hereunder;

“A court may only interfere with a situation where an accused has pleaded guilty to a charge where the plea is imperfect, ambiguous, or unfinished such that the trial court erred in treating it as a plea of guilty.. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of facts. An appellate court may only interfere where the charge laid against the accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the Appellant could not in law have been convicted of the offence charged”.
18. Having reviewed the trial court's record against the appeal and the Prosecution Counsel's submissions, I find that the Appellant's answer to the charge is unequivocal. He was repeatedly warned of the danger of pleading guilty but he persisted in the plea by confirming his guilt. The facts presented by the prosecution also prove the offence charge as the medical evidence tendered established penetration based on the injuries noted in the complainant's genitalia. Documentary evidence indicating that the complainant was a minor aged 13 or thereabouts at the material time was also offered and it is unchallenged.
19. The Appellant was allowed to appeal only as regards severity of the sentence imposed but based on the Grounds of Appeal, there is no complaint as to sentence which in any event is lawful as it is the minimum one prescribed by the law. The appeal therefore lacks merit and is dismissed.

**J. M NANG'EA, JUDGE.**

**JUDGEMENT DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT THIS 6<sup>TH</sup> DAY OF MAY, 2025 .**

In the presence of:

The Prosecution Counsel, Ms Sang

The Appellant, Present in person

The Court Assistant (Jeniffer)



**J. M NANG'EA, JUDGE.**

