



**PKN v Republic (Criminal Appeal E057 of 2024)  
[2025] KEHC 8033 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E057 OF 2024**

**RK LIMO, J  
JUNE 10, 2025**

**BETWEEN**

**PKN ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising out of the conviction and sentence of Hon. S.N.  
Makila (Principal Magistrate) in Kitale Chief Magistrate's Court  
Criminal Case (S.O) No. E019 of 2024 delivered on 22nd August 2024)*

**JUDGMENT**

1. The appellant herein PKN was charged with Incest contrary to section 20(1) of the [Sexual Offences Act](#) No.3 of 2006. The particulars of the charge are that on diverse dates between the year 2019 and 2023 in Trans Nzoia West Sub County, Trans Nzoia County he intentionally caused his penis to penetrate the vagina of IP a female person aged 16 years who was a daughter to the appellant.
2. The appellant also faced an alternative charge of Committing an Indecent Act with a child contrary to section 11(1) of [Sexual Offences Act](#).
3. The appellant denied committing the offence but after trial he was found guilty of the principal charge and convicted. He was sentenced to serve 50 years in jail.
4. He felt dissatisfied with both the conviction and sentence and made this appeal raising the following grounds namely;
  - i. That the prosecution's case was not proved beyond reasonable doubt.
  - ii. That the trial magistrate erred by drawing adverse inference and shifting the onus of proof to the appellant.



- iii. That the trial court disregarded his defence.
  - iv. That the trial court relied on evidence of a single witness without warning itself of the dangers of relying on such evidence.
  - v. That critical witnesses were not called to testify.
5. In his written submissions, the appellant has delved on fair trial stating that he was not notified of his right to have an advocate to represent him during trial. The appellant however did not raise any issue regarding fair trial in his memorandum of appeal and has raised it belatedly in his written submissions without first seeking leave of this court under section 350 (b) of [Criminal Procedure Code](#).
  6. He submits that his defence was not considered despite calling 5 witnesses in his defence. He contends that he was home on 9/12/2023 when the complainant was found with love letters and photos taken with her boyfriend. He claims that when he inquired and attempted to discipline her, his wife stopped him and the complainant ran away from the house to her biological mother. He contends that a month later he learnt that she had reported at Gitwamba police station that she had been defiled and accused him for incest.
  7. According to the appellant his daughter (complainant) went to report him to revenge or in retaliation to being found with love letters. He contends that his witnesses during trial confirmed his allegations regarding the complainant's boyfriend who gave her shelter when she ran away from home.
  8. He faults the trial court for disregarding his defence without giving weight to it. He claims that the allegations made by the complainant were a cover up.
  9. He submits that the defence put forward should have created doubt in the mind of the trial court regarding the truthfulness of the complainant.
  10. He further submits that the prosecution's case was not proved beyond reasonable doubt. He avers that the prosecution had the burden of proof which in his view was never discharged because the evidence tendered was marred with contradictions and inconsistencies. He submits that there was no evidence tendered showing that he penetrated the complainant.
  11. He submits that the medical evidence tendered was not conclusive with regard to penetration and that even if penetration was established, then the same might have been caused by her boyfriend. He faults the trial court for not analyzing the evidence tendered well.
  12. He contends that the prosecution failed to call critical witnesses submitting that there were four important witnesses who were not called and blames the trial court for not summoning them.
  13. On sentence, the appellant submits that the trial court should have focused on restorative justice rather than retributive justice policy. He contends that the sentence meted out was harsh, excessive and had caused him psychological trauma.
  14. The State has opposed this appeal through written submission dated 30/4/25.
  15. The State's response to the right to legal representation is that failure to inform an accused person of his right to legal representation does not vitiate conviction. The respondent relies on the Court of Appeal decision in [Manyeso v Republic](#) (203)KECA 825 KLR.
  16. The respondent submits that the prosecution proved the 2 necessary ingredients of the offence to wit;
    - i. Penetration and



- ii. Relationship and age of the complainant.
17. The State submits that the evidence of the complainant showed that the appellant committed incest on his daughter on several occasions and contends that the medical evidence tendered proved the fact. It further states that incest is not only proved by proof of pregnancy.
  18. The respondent further submits that the age of the complainant was proved by the birth certificate tendered as DExhibit 3 which indicated that the minor was 12 years old.
  19. The respondent denies the appellant's contention that his defence was not considered submitting that his defence and that of his witnesses concentrated on the fact that the complainant had a boyfriend.
  20. I have perused through the evidence from the trial court and my role as a first appellate court is to re-evaluate the same and make own conclusions giving room to the fact that the trial court was well placed to read the demeanour of the witnesses as they testified.
  21. The prosecution's case hinged heavily on the evidence of the complainant (PW1) and the medical evidence adduced by George Masika a Clinical Officer (PW3).
  22. The complainant, a girl who stated that she was aged 17 years old on 25/4/24 when she testified, stated that she was forced by circumstances to go and live with her stepmother and her father (Appellant). She recalled that sometime in May 2019, her father told her to follow him to the house to go and fix her farming tool (a jembe) as the other children were busy at the garden. She stated that when inside the house, the appellant, who is her father asked her if she was a virgin before forcefully defiling her. The complainant emotionally told the trial court what she went through adding that the appellant gave her 20/- and threatened her never to report to anyone about the ordeal. She testified that the appellant showed her a knife to drive the point home.
  23. The complainant testified that from that day the appellant defiled her severally. She recalled the last episodes of 8/12/23 and 9/12/23 stating her father the appellant herein turned her into a wife. She recalled getting pregnant 3 times and every time the appellant would procure an abortion. She recalled that the last abortion was in August 2023.
  24. She testified that the appellant used to be very hostile to her and always beat her and that kept her silent and did not confide to anyone about her tribulations.
  25. George Masika (PW3) testified that he was a Clinical Officer based at Gitwamba Health Centre. He stated that on 11/1/24 the complainant was referred to him for medical examination and that upon examination he noted the following;
    - i. That hymen was torn with old looking margin.
    - ii. Whitish discharge from the labia minora and majora.He stated that upon lab examination it was found that the girl had bacterial infection including urinary tract infection. The medical officer concluded that there was no evidence of recent penetration but there was evidence of acts of penetration in earlier dates. He tendered the P3 Form as PExihit 1 and Treatment Notes as Pexhibit 2.
  26. It is apparent that the appellant in this appeal has placed weight on the Doctor's finding that there was no evidence of recent penetration with a view to attacking the findings of the trial court, submitting that there were inconsistencies in prosecution's case. However a look at the evidence of the complainant indicates that "she was defiled severally in 2019 and later in 2023 with the latest incest being committed on 9/12/2023". The Clinical Officer examined her on 11/1/2024 more than a month after the last act



- of incest. The findings of the Clinical Officer (PW3) were therefore consistent with the evidence of the complainant.
27. The fact that the Doctor found that the hymen was torn with “old looking margin” does not lessen the weight of the complainant that her father broke her virginity in 2019 and thereafter severally defiled her.
28. I have looked at the evidence of the complainant as taken down by the trial court and it is evident that the child broke down several times while giving evidence. The trial court (Hon S.N, Makila) to her credit captured the episodes of breaking down well in the proceedings. The trial magistrate in her judgment captured the demeanour well when she observes;
- “I had the privilege of observing the demeanour of the complainant when she testified and I must say that her demeanour spoke of a deep pain, trauma and shame. Through her tears she narrated to court, the shame she endured and had to hide for years as her father defiled her habitually while threatening to kill her..... the testimony of the complainant was consistent, firm and coherent even when she was cross-examined by her tormentor the accused.....”
29. This court has evaluated the evidence tendered and I find the same to be horrendous and despicable. What the appellant did to his daughter is simply unimaginable. He has tried to lay blame on his estranged wife, the mother of the victim but I find no basis.
30. This court finds that the element of penetration was proved beyond reasonable doubt. The appellant after repeatedly procuring abortions thought he had gotten away with it but he was mistaken. Incest is not proved by pregnancy. The evidence given by the complainant and the Clinical Officer proved beyond doubt that the child was penetrated on several occasions.
31. The element of relationship between the complainant and the appellant is uncontested. The complainant stated that the appellant was her father and the appellant in his evidence stated that it was true that the complainant was his daughter.
32. It is evident that the appellant went to great lengths to try and prove that the complainant had a boyfriend named Calistus but I find that, that line of defence was in vain because the fact could not negate the clear evidence of incest.
33. The appellant lined up witnesses one of whom was his second wife AC (DW2) who was the stepmother to the complainant. The appellant’s witnesses did not dispute the evidence of incest. All the witnesses simply talked of was the fact that the complainant’s biological mother was separated from the appellant and that the complainant had a boyfriend.
34. The appellant cannot fault the trial court for not considering his defence when the same was too weak as compared with the overwhelming evidence showing that the appellant shamelessly defiled his daughter not once but several times.
35. On the question of right to legal representation, I have checked at the proceedings and find that the appellant did not request for any legal representation. This court concurs with the respondent that the fact that he was not informed of the right to legal representation does not in itself vitiate the finding of conviction. This court is well guided by the authorities cited by Mr Mark Mugun, Principal State Counsel, in the decisions in *William Oongo Arunda v Republic* [2022]KECA 23 KLR and *Manyeso v Republic* [2023]KECA 827 (KLR). This court finds that the appellant participated fully in his trial and cross-examined all the witnesses and went ahead and called 3 witnesses. He was not prejudiced in any way and I do not find any evidence of unfair trial.



36. On sentence, I find that the age of the victim was proved to be 12 years old at the material time [2019]. The law under Section 20(1) of *Sexual Offences Act* prescribes life imprisonment for a person found guilty of incest if the victim is under 18 years of age. The trial court took into consideration aggravating circumstances including, physical, mental and psychological trauma in meting out a jail term of 50 years.

I am unable to intervene given the circumstances. The trial court was well placed to see the emotional and mental trauma of the victim. The sentence in my view was well deserved.

In short this court finds no merit in this appeal. The same is dismissed. Both conviction and sentence are upheld.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 10TH .DAY OF JUNE, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Mr Mugun for the State

PKN – the appellant

Duke- Court Assistant

