EL v Republic (Criminal Appeal E045 of 2024)
[2025] KEHC 12634 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEHC 12634 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL APPEAL E045 OF 2024

AK NDUNG'U, J

JULY 30, 2025

BETWEEN

EL ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From original Conviction and Sentence in Rumuruti SPM Sexual Offences Case No E001 of 2024– E Kithinji RM)

JUDGMENT

1. The Appellant, EL, was charged with defilement contrary to Section 8(1) as read with Section 8 (3) of the *Sexual Offences Act*, No 3 of 2006. The particulars were that on 26/12/2023, at [Particulars Withheld] in Laikipia West Sub-County within Laikipia County, intentionally and unlawfully caused his male organ namely penis to penetrate the vagina of F.L a child aged 14 years. He was tried and convicted and on 19/07/2024, sentenced to twenty (20) years imprisonment.

2. Being dissatisfied with the conviction and the sentence, he lodged this appeal vide a petition filed on 24/07/2024 raising the following grounds;

    i. The learned magistrate erred by failing to sentence him in accordance with the *Children Act* of 2022 due to the fact that he was 17 years old when he was arrested and charged with the alleged offence.

    ii. The trial magistrate erred by relying on uncorroborated and contradicting evidence tendered by the prosecution's witnesses.

    iii. The learned magistrate erred by failing to exercise prudence thus relied on hearsay evidence rather than facts based on factual findings.

    iv. The learned magistrate failed to consider his mitigation.

v. The learned magistrate erred by failing to consider his defence.

3. The appeal was canvassed by way of written submissions. In his written submissions, the Appellant argued that the P3 form and treatment notes were not corresponding as the victim had stated that she was on her monthly periods prior to the act and the clinical officer did not determine whether the blood stains on her clothes and the vaginal discharge were from her monthly periods or as a result of a broken hymen. The fact that she was on periods might have affected the test of penetration. Further, there were no spermatozoa nor perennial tears. Additionally, he observed that PW2 stated that the freshly broken hymen was suggestive of defilement but did not state whether the said conclusion was based on any other observation and the trial court therefore erred relying on the fact of a broken hymen alone. Reliance was placed on the case of P.K.W vs R where the Appellate court frown on the issue of a broken hymen as proof of penetration.

4. He submitted that PW2 was not asked whether the rapture of the hymen was as a result of sexual intercourse or any other factor. That PW2 had scientific knowledge to establish that the victim's vagina had been penetrated but there was no such evidence except alluding to a broken hymen. That the rupturing of the hymen had no connection with defilement of PW1 since she did not state whether she was forcibly undressed before the act, how the act of sexual intercourse started and how it concluded, whether she attempted to scream or escape. That apart from stating that she had sexual intercourse with him, there was no evidence whether it was partial or complete and there was no evidence on how he penetrated her sexual organ.

5. As to identification, he submitted that PW1's testimony was full of discrepancies as she testified that she knew him as L but later on contradicted herself by stating that it was her first time seeing him raising the question whether he was identified or recognised by PW1 and if it was identification, there is no indication that she gave description of him to the police and an identification parade ought to have been conducted. That the variation in PW1's evidence cast a reasonable doubt on veracity of her evidence which should have been resolved in his favour. The evidence that was laid before the trial court shows that the complainant's knowledge about the Appellant was insufficient as she was not familiar with him. That she testified that she went to the manyatta and identified him but failed to give description on how or when he was identified.

6. He submitted that crucial witnesses were not availed including the mother and a brother of the complainant. That the mother would have informed the court what the complainant told her immediately after returning home from grazing and would have been an independent witness to the alleged act of defilement and could have lent credence to complainant's claim of defilement. Her brother, E, who made the report to the police and led to his arrest was also not called hence the prosecution concealed exculpatory evidence by failing to call such crucial witnesses.

7. That his alibi defence was not considered as the trial court failed to consider his defence and the testimony of his two witnesses that he was at Samburu County on the material day and not at Matigari which was corroborated by his two witnesses and it was upon the prosecution to disprove this evidence. The prosecution should have placed him at the scene of crime on the time the alleged offence was said to have been committed and in absence of such evidence, his alibi defence was probable and cast doubt on the prosecution's case. The trial court also dismissed his alibi defence without giving cogent reasons.

8. With respect to sentence, he submitted that the trial court failed to take into account the best interest principle of a child contravening Article 53(2) of *the Constitution*. That the act of detaining him to the mainstream prison when he was a minor has contributed to psychological and physical torture, culture shock, bullying among other vices. That he was only 16 years old at the time of the commission of the offence as he was born on 26/11/2007 as per the attached birth certificate. That the trial court failed

to consider his tender age even from physical appearance for purpose of sentencing. That the court is empowered to sentence a child offender in any other lawful manner as provided under Section 191(1) of the *Children Act* and he urged the court to quash the conviction and set aside the sentence.

9. In rejoinder, the Respondent's counsel submitted that penetration was sufficiently proved since PW1's evidence was consistent throughout and she was clear as to who defiled her. Her evidence remained unshaken even during cross examination and as was held in Bassita v Uganda S.C Criminal Appeal No. 35 of 1995, a victim's testimony in a sexual offence is enough proof and it is not a hard and fast rule that medical evidence must be adduced to corroborate the victim's claims. Furthermore, the prosecution adduced medical evidence that corroborated PW1's testimony. The fact that there was penetration was corroborated by the P3 form produced by PW2 who stated that the hymen was freshly broken hence penetration was sufficiently proved. With respect to the Appellant's assertion that there was no presence of spermatozoa and a freshly broken hymen was not enough to prove penetration, she quoted the case of Alex Chemwotei Sakong v Republic (2018) eKLR and submitted that absence of sperms does not rule out penetration as a freshly broken hymen was proof enough that an act of penetration had taken place. PW2 also concluded that defilement had occurred.

10. With respect to age of the complainant, she submitted that the same was proved through her birth certificate, Pexhibit3.

11. As to identification, she submitted that it was sufficiently proved as PW1 referred to the Appellant as a moran by the name L and during cross examination, she testified that she would see him passing by and that he knew her because he frequently saw her and even knew which manyatta she lived in. Hence, the fact that she referred to the Appellant by name shows that she was familiar with him and there would be no possibility of error in identification. That PW1's evidence was corroborated by the P3 form.

12. With respect to the Appellant's defence, it is submitted that his defence was a mere denial without any substantive explanation that could cast doubt on the prosecution's case. That he did not produce any document to show that he was initially arrested for stock theft and that he was in Samburu at the material time. Further, he only raised the issue of being in Samburu for the first time at the defence stage. That an alibi defence must be pleaded at an early point during the hearing to allow the State sometime to interrogate the same. The fact that he was in Samburu was never put to any of the prosecution's witnesses to be tested during cross examination as was stated by the court in Erick Otieno Meda v Republic (2019) eKLR. On the issue of sentence, she submitted that the Appellant was sentenced to 20 years imprisonment as provided in law and going by the circumstances of the case, the same was merited. That sentence is a discretion of the trial court and the court was urged not to interfere with that discretion.

13. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. See Okeno v Republic [1972] EA 32.

14. It is opportune at this stage to have a recap of the evidence at trial.

15. PW1, the complainant testified that on 26/12/2023, she was taking goats home after grazing when a moran, L held one goat. She asked him why he was holding the goat and he threw her on the ground, removed her inner wear, lay on top of her and held her on the ground by force. He was wearing the traditional leso for moran. She testified that she was on her period and that he inserted his penis into her vagina and when he was done, he left. She informed her mother who informed her brothers who told her that they will take her to hospital for tests and she was taken to hospital. It was her first time seeing the Appellant. That she would see him from a far and where the goats were grazing was near his home. She identified him in court.

16. On cross examination, she testified that she would see him passing from a far and that he used to see her and he knew the Manyatta she was living in. That she said she recognised him from seeing him but did not know his name yet. That she did not accuse him of taking the goats but asked him why he was holding their goat. That the area had bushes and was not flat. She testified that there was no witness and she went to identify him at their manyatta and she was taken to identify him because she was in a position to do so.

17. PW2, the clinical officer produced the treatment note as Pexhibit1 and P3 form as Pexhibit2. He testified that he filled the P3 form whereas the treatment notes were filled by his colleague Peter Mwangi whom he had worked with for two years hence he was familiar with his handwriting. He testified that the complainant was examined on 27/12/2023 and upon examination, there was a vaginal discharge with bleeding, there were no perennial tears or lacerations, the hymen was freshly broken and the conclusion was defilement and she was put on medication. The lab tests were negative. There were blood stains on her clothes and the conclusion was that she was forcefully sexually assaulted by a person well known to her. That he did not examine her genitalia as she had been examined by his colleague but the details in the P3 and treatment notes were corresponding. He filled the P3 form on 31/12/2023 whereas the treatment notes were filled on 27/12/2023 and his colleague observed that there was penetration and the hymen was freshly broken.

18. PW3 the investigating officer testified that she was informed of the Appellant's arrest. The complainant went to the station on the next day and they interrogated her and took her to the hospital. She informed them that she was herding when the Appellant sexually assaulted her. She produced her birth certificate as Pexhibit3.

19. On cross examination, she testified that the people who arrested him handed him over to the officers and that the complainant identified him to them. That she was assigned a defilement case and not one on stealing goats.

20. PW4 was the arresting officer, he testified that one E went to police station and informed them that there was a defilement case that was reported in Rumuruti police station and the suspect was seen at Kiriko Centre and requested for their help in arresting the suspect. He informed them the clothes the suspect was wearing. They got to the place and found an event of Samburu culture and he showed them the young man in question and they arrested him.

21. On cross examination, he testified that they were informed by the girl who was in the ceremony and who identified him. That he was well known by the complainant and that he was pointed out to them and was identified by the victim.

22. The Appellant was placed on his defence and he testified that on 24/12/2023, he was in Samburu where he stayed for four days and came back to Laikipia on the fifth day, on 29/12/2024. He was invited at a function on 30/12/2024 and while there, he was arrested for reasons not known to him. He was taken to Rumuruti police station and upon inquiring the reasons for his arrest, he was informed that he had stolen goats. He was taken to the hospital the next day where he was informed that he had defiled a girl and he asked why the change of the charges. His brother informed him that he had a defilement case. He asked the girl's brother why he was accused of defilement yet he did not know her. He testified that he did not know her family and their home is far away.

23. On cross examination, he testified that he used his motor bike to travel and he did not have ownership documents for the motor bike. He had a logbook though he did not know that he was required to produce it. That he explained to the girl's brother that he was in Samburu and also to PW4 and that he had stated so during the testimony of the investigating officer. That he did not know the victim prior

to her testimony and did not know their family since they had recently moved there. He had no grudge against the victim's family and they had no reason to falsely accuse him. He maintained that he was in Samburu at a market called Lomorok where he had gone to sell goats. He did shopping and went home though he did not have a receipt for the same. That he did not go with the old man who was his witness. That he had no witness to testify as to whereabouts at the market.

24. He testified on re-examination that he was not in the area when the offence was committed.

25. DW2 testified that he had gone with the Appellant to Samburu on 24/12/2024 and they came back on 28/12/2024. They were there for five days. They slept and on the next day, they went to a place called Mbuzi where the Appellant was arrested. He did not know why he was arrested.

26. On cross examination, he testified that they returned on 28/12/2023 to Rumuruti and they were there for five days and not four days and on 29/12/2023, they went home. That he could not remember the exact date they returned and testified that they returned on 29/12/2024, that was the date they left Samburu. That they were with another old man. They left with a motorbike which was driven by the Appellant whereas the old man had his own motorbike. That on 26/12/2024, he was at Samburu at home together with the Appellant.

27. DW3 testified that he was the village elder and that he was told that the Appellant had travelled to Samburu and he discovered on 26/12/2024 that he was not at home. He conducted his own investigations since the young men of his age group were prone to trouble making and he became aware that he was not at home. He was informed that he went to Samburu on 24/12/2024. That he was arrested on 30/12/2024 and he went to police station and asked him whether he was arrested for stealing but he said he did not know why he was arrested. That after two days, he heard that he had been accused of defiling a neighbour's child at Mutara location. That he was not able to get in touch with the victim's parents.

28. On cross examination, he testified that he was informed on 26/12/2024 by young men in the neighbourhood that the Appellant had gone to Samburu and before that, he was not aware and was not sure whether he had gone to Samburu. That the girl hailed from a neighbouring location and that he was not with the Appellant on 26/12/2023 and he did not know what he did on that day.

29. That was the totality of the evidence before the trial court. I have had occasion to consider the evidence. In so doing, I have taken cognizance that I neither saw nor heard the witnesses testify and have given due allowance for that fact. I have put into account the applicable law, the submissions made and case law cited. Of determination is whether the prosecution proved its case to the required degree and, if in the affirmative, whether the sentence passed was legal and appropriate in the circumstances.

30. It is trite that for the charge of defilement to stand, the Prosecution must prove the age of the victim (must be a minor), that there was penetration and a clear identification of the perpetrator. These ingredients are well set out under Section 8(1) of the *Sexual Offences Act* No. 3 2006.

31. Proof of age is important in a sexual offense. In Kaingu Kasomo vs. Republic, Criminal Appeal No. 504 of 2010 (UR), the Court of Appeal stated that:

> " Age of the victim of sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim."

32. In the present appeal, the complainant's age is not disputed. Her birth certificate was produced by PW3, the investigating officer as Pexhibit 3. According to the birth certificate, she was born on

03/09/2010. The alleged offence was committed on 26/12/2023 hence she was 13 years at the time and a minor for the purpose of *Sexual Offences Act*.

33. With respect to penetration, the appellant contention is that the medical evidence did not indicate whether the freshly raptured hymen was raptured due to penetration or any other factor. That the victim had stated that she was on her monthly periods prior to the act and the clinical officer did not determine whether the blood stains on her clothes and the vaginal discharge were from her monthly periods or as a result of a broken hymen. That the fact that she was on periods might have affected the test of penetration. Further, there were no spermatozoa nor perennial tears.

34. PW1 as seen earlier testified that when the Appellant held their goats, she asked him why he was holding the goat and he threw her on the ground, removed her pants, held her on the ground by force, lay on top of her and inserted his penis into her vagina. She testified that she was on her monthly periods at the time.

35. PW2, the clinical officer testified that the complainant was examined by his colleague who filled the treatment notes. That his colleague observed that the hymen was freshly broken hence there was proof of rape. He also observed that there were no perennial tears nor spermatozoa and all lab tests were negative. He produced the treatment notes as Pexhibit 1. He testified that he filled the P3 form using the treatment notes.

36. The trial court while convicting the Appellant found that penetration was proved through the medical evidence as well as direct evidence of the complainant.

37. I also find that penetration was proved through the complainant's evidence which was corroborated by PW2 and medical evidence. The complainant was examined on 27/12/2023, a day after the incident and the doctor found that her hymen was freshly broken. This corroborated the complainant's evidence that she was sexually attacked on 26/12/2023 while herding the goats when the attacker threw her on the ground, removed her pants, lay on top of her and inserted his penis into her vagina.

38. The fact that there were no injuries or lacerations or spermatozoa is a non- issue as it is not a legal requirement that a victim must suffer lacerations, cuts, bruises or any other injury to the genital organ as was held in GDB v Republic (2017) eKLR.

39. With respect to identification, this court is alive to the stringent legal requirement that the circumstances of identification of a suspect in a criminal case must be such that the identification is free from error. There is the further distinction between identification of a person already known to the witness before (recognition) and the identification of a stranger. In both cases, the court must consider whether conditions of identification are difficult.

40. In the case of Faith Muthoni M'ngondu & 3 others v Republic [2018] eKLR, the Court of Appeal addressing itself to the principles applicable where identification of a perpetrator is disputed stated;

> " The guiding principles that the learned Judges took into consideration when addressing the appellants' challenges to their identification/recognition at the scene of the robbery are the same principles we are enjoined to apply in determining the same issue as now placed before us. These have now been crystallized in a long line of cases. See Cleophas Otieno Wamunga versus Republic [1989] KLR; Paul Etole & Another versus Republic [2001] eKLR; and Francis Kariuki Njuru & 7 Others versus Republic Criminal Appeal No. 6 of 2000 (UR). They may be summarized as follows:

(i) Evidence of visual identification in criminal cases can bring about miscarriage of justice. It is for this reason that a court is enjoined to examine such evidence carefully to minimize such danger.

(ii) Whenever the case against the defendant depends wholly or to a great extend on the correctness of one or more identification of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of such identification/ recognition.

(iii) The court has an obligation to examine closely, the circumstances in which the identification by each witness come to be made.

(iv) The court also had a duty to remind itself of any specific weaknesses which may have appeared in such identification evidence.

(v) It is true that recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knew, the court should remind itself that mistakes in recognition of close relatives and friends are sometimes made.

(vi) Evidence relating to identification has to be scrutinized carefully and should only be accepted upon if the court is satisfied that the identification was positive and free from any possibility of error.

(vii) Among the factors surrounding evidence of identification/recognition that a court is required to inquire into is whether the witnesses gave either the description or the names of the attackers to either the police or persons who come to the scene of the attack soon after the attack and at the earliest opportunity".

41. In the case of Wamunga v Republic (1989)KLR 426 cited by the Court of Appeal above, the court had put it plainly thus;

> " It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction"

42. In this appeal, it was argued that complainant's knowledge about the Appellant was insufficient as she was not familiar with him. That she testified that she went to the manyatta and identified him but failed to give description on how or when he was identified. That PW1 contradicted herself when she testified that she knew the Appellant as L but later on testified that it was her first time seeing him. In his defence, he testified that he was not within the area where the offence was alleged to have been committed since he was in Samburu.

43. The complainant's evidence was that a moran named L found her. That it was the first time seeing him. She then testified that she would see him from a far and where the goats were herding was near his home. On cross examination, she testified that she used to see the Appellant passing from a far. That he would see her and he knew the manyatta where she was staying. The Appellant asked her during the trial that she asked his name when he was arrested and she responded by stating that she said she

recognised him from seeing him but did not know his name yet. She testified that she went to identify him at their manyatta.

44. That evidence is by itself contradictory and shaky. Matters are not helped by the evidence of the arresting officer, PW4. He stated that one E went to the police station 0n 30/12/23. E informed PW4 that there was a defilement case which had been reported at Rumuruti police station. Notably the said E does not mention that the description of the suspect had been given to the police. He went on to state that the suspect had been seen at Kiriko. Centre. PW4 states that they were told the clothes the suspect was wearing. (The colour is not stated). PW4 went to the scene with 2 other officers. They found an event of Samburu culture on- going. E showed them the young man in question whom they arrested. On cross examination, PW4 stated that the suspect was pointed out by the girl who was in the ceremony. He was identified by the victim.

45. The evidence as put forth PW4 and PW1 on the identification of the suspect is not only contradictory but confusing. For instance, at what point did the girl happen to be at the Samburu Cultural ceremony? Had E left her there before proceeding to report to PW4? What happens to her evidence that she is the one who led her brothers to a manyatta where the Appellant was arrested?

46. It is also noted that crucial witnesses who could have shed more light on the events leading to his arrest were not called as witnesses. These were the complainant's brothers and more specifically one E who sought assistance from PW4 to arrest the Appellant. E would have been a crucial witness in explaining what description of the suspect PW1 had given in the first instance and clarifying where and how the suspect was picked out at the time of arrest.

47. Though the prosecution is not bound to call numerous witnesses to prove a fact in line with Section 143 of the *Evidence Act*, the court in Bukenya And Others V. Uganda [1972] EA 349 held that;

> " While the Director is not required to call a superfluity of witnesses, if he calls evidence which is barely adequate and it appears that there were other witnesses available who were not called, the court is entitled, under the general law of evidence, to draw an inference that the evidence of those witnesses, if called, would have been or would have tended to be adverse to the prosecution case."

48. There is no requirement that the prosecution has to call a number of witnesses to prove a fact. But, if he fails to call crucial witnesses, an inference can be made that their evidence would have been in adverse to their case. It is my view that E was a crucial witness as he could have shed more light on how the Appellant was arrested, whether the Appellant was pointed out to the police by the complainant who was at the Samburu cultural event or the complainant went to their manyatta and identified him, or whether he was the one who pointed out the Appellant to the police.

49. It is trite law that an accused person has no obligation at all to prove his innocence and that a conviction can only lie when the evidence proves the defendant's guilt beyond reasonable doubt.

50. Further, it is noted that throughout the prosecution's case, the Appellant maintained that he was arrested for stock theft but the charges were changed to that of defilement. The Appellant's defence was that at the material time, he was in Samburu and this was supported by his two witnesses including the village elder, DW3. He testified that he visited the Appellant upon his arrest and asked him whether he was arrested for theft but the Appellant informed him that he was not aware of the reasons of his arrest but later on he heard that he was charged with defiling a girl.

51. As held by the Supreme Court of Nigeria in Ozaki and another v The State, for a defence to be rejected it must be incredible and that the defence must be weighed against the evidence offered by the prosecution.

52. The duty of an accused person in so long as proof of the charges is concerned is put succinctly in the case of Uganda v Sebyala& Others, Case No. 130 of 1988.[6]{1969} EA 204 thus;

> " The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is thin an alibi which is not particularly strong may very well raise doubts."

53. The accused has only what is referred to as the evidential burden which means the duty of adducing evidence or raising the defence of alibi. Once an accused person discharges the evidential burden of adducing evidence of alibi, it's the duty of the prosecution to disprove it. The duty of the court is to test the evidence of alibi against the issue adduced by the prosecution and if there is doubt in the mind of the court the same is resolved in favour of the accused. See OrteseYanor& Others vs The State {1965} N.M.L.R. 337.

54. I have reviewed the evidence and findings on the same by the trial court in so far as identification of the Appellant was concerned. The trial court in addressing this issue rendered itself as follows;

> " PW1 the complainant testified in court that on the material date, a Moran who she had previously seen from a far, approached an got hold of one of the goats she was herding. When she asked him why he was holding the goat, he threw her to the ground and removed her underwear and proceeded with the unlawful act.
>
> To the court's mind, there was an interaction between the accused and the complainant on the material date. The accused was not a complete stranger to her and even if he had been prior to that day, the interaction between both of them occurred during the day where she had opportunity to look at him. Further to that, the complainant was able to later use her memory and recollections to identify the accused to her brothers after which he was arrested. Indeed, the complainant stated that even though at the offending time she did not know his name, she knew the area the goats were grazing was near his home. It is a finding of the Court that hers was positive identification of the accused by the complainant".

55. With profound respect, this summation sweeps under the carpet the discrepancies, disparities on place of arrest and the oblique sequence of events particularized above.

56. I hold and find that the identification of the Appellant is shrouded in doubts and which doubts, as is ordained in law, must be resolved in favour of the Accused.

57. Before I pen of, and despite the above findings, I find it necessary to address the issue raised by the Appellant to the effect that he was a minor offender but was sentenced as an adult.

58. With respect to sentence, the Appellant was sentenced to twenty (20) years imprisonment as the law provides. He however submitted that at the time of the commission of the offence, he was 16 years old, hence a minor and the trial court failed to treat him as such during the trial and during sentencing. He attached his birth certificate in his submissions before this court.

59. It is to be noted that the issue of his age is being raised for the first time on this appeal. This was not raised during the trial and this denied the prosecution the opportunity to interrogate the same by way of cross-examining him and other witnesses hence an afterthought.

60. That said, I must add that it is the duty of the trial court and in deed, initially the duty of the prosecution to establish the age of an offender to avoid a miscarriage of justice and non-compliance with Article 53(f) of *the constitution*.

61. As very aptly reasoned by the court in Cheruiyot v Republic (Criminal Appeal 133 of 2019) [2020] KEHC 487 (KLR) (30 December 2020) (Judgment), there is need to limit the life of children's cases in the courts in the same manner as the election petitions coupled with the need for the prosecution and a trial court to conduct investigation through an age assessment so as to establish the actual age of an accused person before trial. Additionally, it espoused on the duty of a trial court to inform an accused person of his rights before undergoing trial. Further, the court found that there are systemic failures in the criminal justice system which prolonged the life of children's cases in the courts. Thus, the court held that there is an urgent need to set up appropriate structures and infrastructure necessary to limit the life of children's cases in the courts in the same manner as the election petitions.

62. As the question of age is now moot the court having found negatively on the issue of conviction, I will not delve into it.

63. With the result that the conviction of the Appellant was most unsafe. The appeal succeeds in its entirety. The conviction is quashed and sentence set aside. The Appellant is to be set at liberty unless otherwise lawfully held under another warrant.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 30 TH DAY OF JULY 2025.

A.K. NDUNG'U

JUDGE