



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiprop v Republic (Criminal Appeal E013 of 2024)  
[2025] KEHC 10874 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10874 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL APPEAL E013 OF 2024  
RB NGETICH, J  
JULY 24, 2025**

**BETWEEN**

**ROBINSON KIPROP ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against both the conviction and sentence from the Judgment delivered on the 26th July, 2023 by Hon. Edwin Mulochi (SRM) in Kabarnet Magistrate's court Criminal Case S.O No. E002 of 2023)*

**JUDGMENT**

1. The Appellant was charged with the offence of Rape contrary to section 3(1) as read with Section 3(3) of the *Sexual Offences Act* No. 3 of 2006, the particulars of the offence were that the accused on the 27<sup>th</sup> day of January, 2023 at about 1500 hours, at [Particulars Withheld] village Tiaty West Sub-county within Baringo County, intentionally and unlawfully caused his penis to penetrate the vagina of CSA without her consent in contravention of the said Act.
2. The alternative charge was the offence of committing an indecent Act with an adult contrary to section 11(a) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that the accused on the 27<sup>th</sup> day of January, 2023 at about 1500 hours at [Particulars Withheld] village Tiaty West Sub-County within Baringo County, intentionally and unlawfully committed an indecent act by touching the vagina of CSA without her consent in contravention of the said Act.
3. The accused denied the charge and the matter was set down for full trial where the prosecution called a total of 7 witnesses in support of the charges facing the accused.
4. Upon the close of the prosecution's case and the defense case, the trial court by judgment delivered on the 27<sup>th</sup> day of October, 2023, found him guilty of the offence of Rape contrary to section 3(1) of the



Sexual offences Act and he was consequently convicted under section 215 of the Criminal Procedure Code. On 15<sup>th</sup> November,2023, the Appellant was sentenced to 10 years imprisonment to run from 30<sup>th</sup> January,2023.

5. Dissatisfied with the conviction and the sentence of the trial court, the Appellant filed this appeal raising the following grounds of appeal:-
  - i. That the Trial Magistrate erred in law and facts by failing to find that the charge sheet in question was fatally defective.
  - ii. That the trial Magistrate erred in law and facts by failing to find that the prosecution had failed to prove the essential ingredients of age as required by law.
  - iii. That the Trial Magistrate erred in law and facts by failing to find that the prosecution witnesses evidence were contradictory, unbelievable and untrustworthy to be relied on a court of law to secure a safe conviction.
  - iv. That the trial magistrate erred in law and facts by failing to analyze the entire prosecution evidence on record hence leading to erroneous conclusion that the Appellant was guilty as charged.
  - v. That more grounds to be adduced when served with record of appeal.
6. The Appellant prays for the total success of this appeal, conviction quashed, sentence set aside and he be set at liberty.
7. The Appellant had earlier on filed in this court an application being Kabarnet H.C Criminal Miscellaneous Application No. E011 of 2024 seeking the review of the sentence and on the 8<sup>th</sup> day of April, 2024, this court ordered that the period served by the Applicant in remand to be computed in the sentence imposed by trial court and that the applicant may seek review on sentence at a later date.
8. When the matter came up for hearing on the 5<sup>th</sup> May,2025, the Appellant stated in court that he wishes to abandon the appeal on conviction and pray that the sentence be reduced. He stated that he is remaining with 4 years 6 months and that he as an old and sick mother.
9. Following this, the court directed that a social inquiry report to be filed to assist the court in determining whether to revise the sentence which was filed as directed by this court.

### **Social Inquiry Report**

10. From the report, appellant sat for his KCSE in the year 2019 and managed to score a mean grade of x. He was to join Chuka University in September 2020 to study for Bachelors in Medical Laboratory. For the period he has been in custody, he indicates that he was attached at the prisons dispensary where he was able to acquire skills in laboratory but he has no certificate. He was married with one child. He said he used to consume alcohol and he is of good health at the moment. He relates well with his siblings and this is his first offence. His family used to have a very close relationship but after the demise of their father, the family union was lost. He is the only one who has a criminal history. The family used to depend on income from their father and livestock rearing as their main source of income. The Appellant relates well with his sisters, mother and uncles.
11. During the social inquiry the Appellant's paternal uncle indicated that the appellant's mother is currently very sick and he is looking after her. He added that he has been in constant communication with the appellant and together with the appellant's sisters, they visit him in prison. They support the appellant's prayer for review of sentence and is willing to facilitate his rehabilitation within the



community and offer supervision when needed. He attributed the appellant's offence to excessive alcohol consumption and negative peer influence. Efforts to reach out to the appellant's sisters were futile. The appellant's wife indicated that at the moment she is at her parents' home where she does casual jobs within the community. She is not opposed to the appellant's prayers as it will be of great help to her as he will assist her daughter who is currently in grade five and if released, she will return back to her matrimonial home.

12. The circumstances of the offence are that the appellant passed by his uncle's homestead (the victim's father) together with other two and found the victim in the homestead together with her twin sister. The appellant then disappeared towards the kitchen, after a shout while, the victim's sister became suspicious of the appellant's disappearance and went to look for him in the other house. Inside the other house, he found the appellant raping her sister and she started screaming at the appellant who then immediately left the compound and disappeared.
13. The appellant admits the offence as charged and said he committed the offence while under the influence of alcohol. He prays for non-custodial sentence so as to take care of his sickly mother, assist his child who is currently with the mother and him being the first born, he wants to start following up on his father's pension and benefits. He is willing to abide by the conditions of non-custodial sentence.
14. The victim who is his cousin from his maternal step uncle is currently aged 23years. She did not attend any formal learning due to being epileptic and poor speech. At the community level she does not get involved in any activity. The victim's father indicated that the appellant committed the offence under the influence of alcohol. He is still bitter over what the appellant did to her sickly child. He opposed the appellant being released to serve community rehabilitation sentence and indicated that he has not reconciled with him.
15. The local administrator noted that the appellant is well known to him plus his family. He added that the appellant's major challenge was excessive alcohol use and negative peer influence and after the demise of their father, he lacked a mentor thus leading him to criminality. He confirmed that the offence took place within the family in that the victim is the child of appellant's uncle. He is not opposed to the appellant's prayer for review of sentence and he is willing to facilitate his rehabilitation within the community provided the victim's family is not opposing his release and if victim's family is opposing his release, then in his view, he should continue serving his custodial sentence.
16. On 3<sup>rd</sup> June, 2025, the prosecution counsel Ms. Kosgei informed the court that they had filed written submissions in response to appeal on challenging conviction and sentence.
17. In response, the appellant said he is not challenging conviction and prayed for his sentence to be reduced.

### **Analysis And Determination**

18. The Appellant informed the court that he has abandoned the appeal on conviction and he is only pursuing his appeal on sentence seeking that the same be reduced. I therefore wish to consider whether the 10 year sentence imposed by the trial court was harsh and excessive.
19. Sentencing is the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. The discretion is however limited to the statutory minimum and maximum penalty



prescribed for a particular offence. In the case of Shadrack Kipchoge Kogo vs. Republic Criminal Appeal No. 253 of 2003 ( Eldoret), the Court of Appeal stated as follows:-

“ Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of those, the sentence was so harsh and excessive that an error in principle must be inferred”

20. Under section 3(1) of the *Sexual Offences Act* creates the offence of rape, provides for the ingredients of the offence to wit penetration and lack of consent whereas section 3 (3) of the Sexual Offence Act prescribes the penalty for the offence, section 3 (3) of the *Sexual Offences Act* states as follows;

“ A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.

21. In the case of Wanjema vs. Republic (1971) E.A. 493 the court stated as follows:-

“ An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

22. From the social inquiry report, the victim’s father is still bitter. The victim is a daughter to step brother to his mother. The victim has epileptic condition with poor speech. Though the accused attributes the offence to alcohol, there is no doubt that he took advantage of the victim’s condition and raped her. In view of the fact that there is no reconciliation and his uncle is still bitter and in view of the fact that the offence committed is sexual offence which attracts minimum sentence of 10 years which the trial court imposed, I am of the view that the appellant does not deserve review of sentence.

### **23. Final Orders: -**

1. Appeal on conviction is marked as abandoned.
2. Appeal on sentence is dismissed.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

\* Mr. Nganga for State.

\* Appellant present.

\* CA, Elvis.

