



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lekudere v Republic (Criminal Appeal E037 of 2025)  
[2025] KEHC 10156 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E037 OF 2025**

**DR KAVEDZA, J**

**JULY 14, 2025**

**BETWEEN**

**FRED LEKUDERE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. S. Temu (SPM) on 10th March 2025 at Kibera Chief Magistrate's  
Court Criminal Case no. E131 of 2024 Republic vs Fred Lekudere)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for the offence of rape contrary to section 3(1)(c) as read with 3(3) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve ten (10) years imprisonment.
2. Aggrieved, the appellant filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed upon him.
3. As this is the appellant's first appeal, the role of this appellate court of first instance is well settled. It was held in the case of *Okeno v Republic* [1972] EA 32 and further in the Court of Appeal case of [Mark Oruri Mose v R](#) [2013] eKLR that this court is duty-bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyse it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanour of the witnesses and hearing them give evidence and give allowance for that.
4. PW1, ANM, a businesswoman residing in Langata, testified that on 29th September 2024, at approximately 11:00 pm, she was asleep at her residence with her two children. The appellant, her former boyfriend, forcibly entered her home. The premises were illuminated, enabling her to identify



- him. The appellant assaulted her by slapping her face, kicking her abdomen, and strangling her, causing abdominal injuries and bleeding. He then forcibly removed her trousers and underwear and raped her anally.
5. Thereafter, the appellant continued to assault her. Her children, awakened by the commotion, pleaded with the appellant to stop. The appellant thereafter fled the scene. On 30th September 2024, ANM sought medical attention at Ngei Hospital and reported the incident to SHOFCO and the police. She later assisted the police in apprehending the appellant in Langata South by identifying him. During cross-examination, ANM confirmed she screamed during the rape and subsequent assault.
  6. PW2 the complainant's child corroborated ANM's account, identifying the appellant as Fred. PW2 testified that the appellant entered their home while they were asleep, and their mother's screams awakened them. PW2 witnessed the appellant assaulting ANM and noted injuries to her mother's stomach. The appellant fled upon seeing the children. PW2 confirmed the appellant did not return to their home thereafter.
  7. PW3 John Njuguna, Medical Officer testified that on 3rd October 2024, he examined ANM, who presented with a history of rape and assault. Examination revealed injuries to her back, a swollen umbilical cord with pus, and healing bruises on her left knee and forearm. Genital examination indicated an old broken hymen.
  8. PW4 Sergeant Peris Makio, the Investigating Officer confirmed that ANM reported the assault and rape on 4th October 2024. The officer traced and charged the appellant. The delay in reporting was attributed to ANM undergoing counselling before lodging the complaint.
  9. In his defence, the appellant denied the allegations, claiming he was framed. He admitted to a long-standing acquaintance with ANM and stated that on 29<sup>th</sup> September 2024, he visited her home to deliver khat and bread for her children. He contended they conversed and spent the night together, parting in the morning. The following evening, he returned to retrieve his slippers, which displeased ANM. The police arrested him the next day.
  10. The trial court found him guilty of the offence charged and convicted him accordingly.
  11. I have considered the grounds of appeal and I find that the main issues for consideration are whether the prosecution proved its case beyond reasonable doubt and whether the sentence was harsh and excessive in the circumstances.
  12. The main ingredients of the offence of rape created in section 3 (1) of the *Sexual Offences Act* include intentional and unlawful penetration of the genital organ of one person by another, coupled with the absence of consent in the case of *Republic v. Oyier* [1985] KLR 353 the Court of Appeal held that;  
  
“The lack of consent is an essential element of the crime of rape. The mens rea in rape is primarily an intention and not a state of mind. The mental element is to have intercourse without consent or not caring whether the woman consented or not. To prove the mental element required in rape, the prosecution had to prove that the complainant physically resisted or, if she did not, that her understanding and knowledge were such that she was not in a position to decide whether to consent or resist. Where a woman yields through fear of death, or through duress, it is rape and it is no excuse that the woman consented first, if the offence was afterwards committed by force or against her will; nor is it any excuse that she consented after the fact.”



13. Bearing in mind the above provisions, I will now analyse the evidence on record to ascertain whether the essential ingredients of the offence preferred against the appellant were established to the required standard of proof.
14. The first ingredient of rape is the intentional and unlawful penetration of the genital organ of one person by another. In this case, the complainant (PW1), ANM, clearly testified that the appellant, who was her former boyfriend, unlawfully entered her house at night and forcefully inserted his penis into her anus after physically assaulting her.
15. As discussed in the Kenya Judiciary Criminal Procedure Bench Book 2018 paragraphs 94-96 if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful:
  - “ 94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
  95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, *Evidence Act*). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; *Julius Kiunga M'birithia v R* High Court at Meru Criminal Appeal No. 111 of 2011).
  96. The evidence of a child, sworn or unsworn, received under section 19 of the *Oaths and Statutory Declarations Act* is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), CoK”
16. The complainant's testimony did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the victim was telling the truth. In this regard, the trial magistrate noted that the complainant was consistent and steadfast in hers. In addition, their evidence which was subjected to cross-examination remained consistent throughout.
17. This act amounts to intentional and unlawful penetration, particularly as it was non-consensual and perpetrated with violence, thereby satisfying the first element of the offence.
18. The second essential element is the absence of consent. PW1 consistently maintained that she did not consent and described how she was subjected to force, including being slapped, kicked in the abdomen, strangled, and ultimately raped. The violence inflicted, her immediate cries for help, and the injuries corroborated by medical evidence all confirm that the act was against her will.
19. As stated in the case of Oyier (*supra*), consent is fundamental to a charge of rape, and intercourse obtained through force or coercion constitutes rape. In this case, PW1's physical resistance, her abdominal injury, and PW2's testimony collectively affirms the absence of consent.
20. The medical evidence from PW3 further supports the complainant's account. He confirmed injuries, including a swollen umbilical region, healing bruises, and vaginal discharge. These findings provide further corroboration that the act was non-consensual.



21. The identity of the appellant was clearly established. PW1 identified him as there was sufficient light in the room and he was well known to her, they having previously been in a relationship.
22. The appellant's defence that he was framed and that he spent the night with the complainant peacefully is undermined by the consistent, corroborated, and medically supported testimony of the prosecution witnesses.
23. In view of the totality of the evidence, the trial court correctly found that the prosecution proved beyond reasonable doubt all the ingredients of rape: intentional and unlawful penetration and absence of consent. The conviction was therefore properly grounded in law and fact and is upheld.
24. On sentencing, section 3 (3) of the *Sexual Offence Act* prescribes the penalty for the offence of rape 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.”
25. The appellant was sentenced to 10 years imprisonment. During sentencing, the court considered the pre-sentence report and exercised discretion. In the premises, I see no reason to interfere with the sentence.
26. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF JULY 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Absent

Mr. Mongare for the Respondent

Ms. Karimi Court Assistant

