



**Maganjo v Republic (Criminal Appeal E038 of 2024)
[2025] KEHC 9546 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E038 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

UNDERSON DANIEL MAGANJO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in Wundanyi
Sexual Offence Case No. E022 of 2022 delivered on 9th October 2024)*

JUDGMENT

1. The Appellant Underson Daniel Maganjowas convicted with the offence of rape contrary to Section 3(1)(a) (b) (3) of the [Sexual Offences Act](#) No. 3 of 2006 and sentenced to 20 years imprisonment on 9th October 2024.
2. The particulars of the charge were that on diverse dates between April and July 2022, at midnight in Werugha Location within Taita Taveta County, the Appellant intentionally caused his penis to penetrate the female genital organ (vagina) of V.M by use of force and threats.
3. The Appellant was faced with an alternative charge of Indecent Act with an adult contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006 in that in the same material particulars as in Count I above, the Appellant touched the vagina of V.M against her will.
4. The Appellant pleaded not guilty to the charges.
5. The prosecution called a total of six (6) witnesses.
6. The prosecution evidence in summary was that the complainant was staying with the Appellant and his wife who is her Aunt when the Appellant went to the complainant's room in March 2022 and June 2022.



7. The complainant said that the Appellant went to her room at night when her Aunt was away and he forced her to have sex with him.
8. The complainant said she missed her periods in March 2022.
9. She travelled to her home in November 2022 and told her mother what had happened.
10. The mother report to the Chief Werugha and a report was made at Wundanyi Police Station.
11. The complainant was taken to Wesu Sub County Hospital and a test was done which confirmed that the complainant was pregnant.
12. The complainant delivered a baby boy on 29th January 2023.
13. A DNA was done which confirmed that the Appellant was the father of the baby (99.9% chances that the Appellant was the father of the complainant's child).
14. The Appellant was arrested and charged with the offence of rape.
15. The Appellant denied the charges and called his wife (DW2) and Gemstone Safari (DW3) as witnesses.
16. The trial court found that the prosecution had proved the guilt of the Appellant and sentenced him to 20 years imprisonment.
17. The Appellant appealed to this court on the following grounds:-
 - i. That the trial court Magistrate erred in both law and facts in convicting the Appellant to 20 years imprisonment over the offence as preferred without considering the time differences that were there between the date of conception as alleged and the date of delivery.
 - ii. That the lower court Magistrate erred in law and facts in convicting the Appellant and failed to notice the discrepancies, inconsistencies and far-fetched evidence that were in this case.
 - iii. Since this was a family case, the trial court went further to error in law and facts in not considering that some essential witnesses were not summoned in court to affirm their testimony for the fact that this case before reaching to its determination, there would have been a greater consideration (care).
 - iv. That the charge before this court concerning this matter was/is defective and the Appellant's defense was annulled by the trial court without cause.
18. The parties filed written submissions as follows;
19. The appellant, Underson Daniel Maganjo, submitted that he seeks to overturn his conviction and 20-year sentence for rape under the *Sexual Offences Act*, arguing that the trial court erred in law and fact.
20. He contends that the prosecution failed to prove its case beyond reasonable doubt, citing inconsistencies in the complainant's testimony, discrepancies in timelines, and the absence of key witnesses.
21. The complainant (PW1) alleged the appellant raped her in February 2022, leading to a missed period in March and eventual delivery in January 2023.
22. However, medical evidence placed conception around August 2022, contradicting her account.
23. The appellant highlights this inconsistency, arguing the gestation period does not align with the alleged rape date, suggesting the complainant was uncertain about the perpetrator.



24. Further, that the charge sheet cited rape between April and July 2022, conflicting with PW1's testimony, which only mentioned February.
25. The appellant challenged the credibility of PW1's account, noting contradictions in her narrative.
26. She initially claimed the appellant entered her room at night, identified himself, and raped her, but later testified she did not see him until she turned on the lights.
27. The appellant questioned why she would open the door at midnight without inquiry and return to bed if she feared assault.
28. He also pointed out that PW1 never reported the rape to her aunt (his wife), with whom she was close, undermining her claim of non-consensual acts.
29. The defense argued that the relationship between the appellant and PW1 was consensual, given her failure to report repeated alleged rapes or seek help from family.
30. The trial court's reliance on PW1's demeanor, despite contradictions, is criticized as erroneous.
31. The appellant further faults the prosecution for not calling essential witnesses, such as PW1's cousin, who could have corroborated or refuted her claims.
32. Medical evidence from clinical officers (PW3 and PW5) estimated the gestation period at 27 weeks in November 2022, implying conception in August—not February, as PW1 claimed.
33. This discrepancy, the appellant argued, creates reasonable doubt about his guilt.
34. Additionally, the investigating officer's (PW6) testimony introduced new, uncorroborated details, suggesting investigative flaws.
35. The appellant asserted that the trial court ignored exculpatory evidence, including his alibi defense and testimony from his wife (DW2), who stated PW1 was not present in April and July 2022, as alleged in the charge sheet.
36. He also alleged police misconduct, claiming an officer sought a bribe to drop the case.
37. In conclusion, the appellant argued the conviction was unsafe due to unreliable evidence, procedural irregularities, and failure to consider exculpatory testimony.
38. He urged the Court to quash the conviction, set aside the sentence, and grant him liberty.
39. The respondent did not file any submissions herein.
40. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and to come up with its own conclusion whether or not to support the trial court's findings.
41. This principle was affirmed in the case of *Okeno v Republic* [1972] EA 32, where the Court of Appeal held that a first appellate court must subject the entire evidence to a fresh and exhaustive examination and make its own findings on the evidence while giving due allowance for the fact that it did not observe the witnesses' demeanor.
42. The issues for determination in this appeal are as follows;
 - i. Whether the prosecution proved the charge of rape.
 - ii. Whether the sentence was excessive.



43. I have carefully re-evaluated the evidence on record and considered the submissions, the prosecution proved beyond reasonable doubt that the appellant committed the offence of rape contrary to Section 3(1)(a)(b)(3) of the *Sexual Offences Act*.
44. The complainant (PW1) gave a consistent and credible account of how the appellant, taking advantage of his position as her uncle and guardian, forcibly penetrated her without her consent.
45. Her testimony was corroborated by medical evidence confirming the pregnancy and DNA results, which established the appellant as the father of her child with a 99.9% probability.
46. The fact that the complainant explicitly denied consent is, in itself, a critical element in proving rape, as held in *Martin Charo v Republic* [2016] eKLR, where the Court of Appeal emphasized that lack of consent is the cornerstone of a rape charge.
47. The appellant's argument that there were inconsistencies in the timeline of conception and delivery does not discredit the complainant's testimony.
48. Medical evidence, while estimating conception around August 2022, does not negate the fact that the appellant sexually assaulted her.
49. As observed in *J.W.A v Republic* [2014] eKLR, minor discrepancies in dates do not invalidate the core allegations of rape, especially where the complainant's credibility remains intact.
50. The DNA evidence conclusively links the appellant to the offence, and his paternity of the child reinforces the complainant's account of sexual violation.
51. The appellant's claim that the complainant's failure to report immediately undermines her credibility is without merit.
52. Courts have consistently recognized that victims of sexual violence, particularly in familial settings, often delay reporting due to fear, shame, or intimidation (*Fappyton Mutuku Nguvi v Republic* [2012] eKLR).
53. The complainant's eventual disclosure to her mother and subsequent reporting to authorities was reasonable under the circumstances.
54. The trial court properly evaluated the evidence, including the appellant's weak alibi defense and the failure of his wife (DW2) to provide a convincing rebuttal to the complainant's allegations.
55. As held in *Republic v Oyier* [1985] KLR 353, an alibi that is not watertight cannot displace credible prosecution evidence.
56. Regarding sentencing, the 20-year imprisonment term is lawful and proportionate to the gravity of the offence.
57. The *Sexual Offences Act* prescribes severe penalties for rape, and the trial court exercised its discretion appropriately (*Thomas Mwambu Wenyi v Republic* [2017] eKLR).
58. There is no justification for interference with the sentence. This court finds no merit in the appeal and upholds the conviction and sentence imposed by the trial court.
59. For these reasons, the appeal is dismissed in its entirety. The conviction and sentence are upheld.
60. The appellant shall serve his term as ordered by the trial court.
61. He has a right of appeal to the Court of Appeal within 15 days of this date.



DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Appellant

