



**AHI v Republic (Criminal Appeal 039 of 2020)
[2023] KEHC 1010 (KLR) (Crim) (14 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL APPEAL 039 OF 2020

JM BWONWONG'A, J

FEBRUARY 14, 2023

BETWEEN

AHI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the conviction and sentence delivered by
Hon. A.W Macharia on 06/11/2019 in Makadara CM'S Court
in SO No. 243 of 2019 Republic vs Abdullah Hassan Ibrahim)*

JUDGMENT

1. The appellant was on 6th November 2020 found guilty and convicted for the offence of incest contrary to section 20 (1) of the [Sexual Offences Act](#) No.3 of 2016.
2. He had also been charged with an alternative offence of committing an indecent act with a child contrary to Section 11 (1) of the [Sexual Offences Act](#).
3. He was sentenced to serve 20 years imprisonment.
4. Aggrieved by the conviction and sentence he filed a petition of appeal dated 4th October 2021.
5. Simultaneously, he also filed a notice of motion dated 9th December 2021 pursuant to the provisions of sections, 150, 349, 356, 357, and 358 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya (Cap 75) Laws of Kenya and articles 50(2)(g) and 159 (2) (a) of the [Constitution](#) of Kenya, 2010 in which he seeks orders that:
 1. Spent



2. That the court do re-open the case for cross-examination and/or admission of fresh evidence from FH the complainant/victim in the trial court.
3. Spent
4. Spent
5. On July 27, 2022 I allowed the appellant's application to produce new additional evidence in terms of section 358 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya.
6. I ordered for the taking of further fresh evidence to be taken by the lower court, which was duly done.
7. The additional fresh evidence was taken by the lower court on 12/10/2022; which was certified and forwarded to this court.
8. In that court the complainant/victim testified as follows. She testified that the allegation of defilement was all lies. She further testified that she did not know why A and Z told her to lie in court. She further testified that she was told to lie so that she could go the states (USA).
9. Furthermore, she testified as follows. The appellant is her uncle. He is a brother to her father. She did not have a sex with the appellant, but had sex with somebody else.
10. In view of this additional new evidence, I find that the offence was not proved beyond reasonable doubt.
11. The appellant's appeal succeeds with the result that it is hereby allowed.
12. The conviction and sentence of the appellant are hereby quashed.
13. The appellant is hereby set free unless he is held on other lawful warrants.

JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr. Wanyanga for the appellant

The appellant in person.

Ms. Joy for the respondent

