



**GOO v Republic (Criminal Appeal E032 of 2022)
[2023] KEHC 2050 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E032 OF 2022
KW KIARIE, J
MARCH 15, 2023**

BETWEEN

GOO APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the original conviction and sentence in Criminal case No.18 of 2020 of the Senior Principal Magistrate's Court at Mbita by Hon. Japheth Bii–Senior Resident Magistrate))

JUDGMENT

1. GOO, the appellant herein, was convicted of the offence of incest contrary to section 20 (1) as read with section 20 (3) of the [Sexual Offences Act](#) No 3 of 2006.
2. The particulars of the offence were that on the June 24, 2020 in Mbita sub county, within Homa Bay County being a male person caused his penis to penetrate the vagina of BAO a girl aged 13 years, a female person who to his knowledge was his daughter.
3. The appellant was sentenced to serve ten (10) years imprisonment. He was aggrieved and filed the appeal against both conviction and sentence.
4. He raised nine grounds of appeal which can be summarised as follows:
 - a. That he was not supplied with the witness statements and all exhibits the prosecution was to rely on it their case.
 - b. That the arrest was improper.
 - c. That he was prejudiced during the trial and therefore was not accorded fair trial under article 50(2) of the [Constitution](#).



- d. That PW1's evidence adduced in court was incredible, inconsistency, contradictory and had glaring gaps.
 - e. That the learned trial magistrate did not consider my mitigation during the sentencing.
 - f. That the learned trial magistrate failed to warn himself in the dangers of basing as conviction on uncorroborated evidence of prosecution witnesses.
 - g. That the details of the PRC form and different and the documents had doubtful authenticity.
 - h. That the charge sheet was of defective nature as the sentence was not supported in the charge.
5. The appeal was opposed by the state through Mr Ochengo, learned counsel but did not file grounds of opposition or submissions.
 6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic [1972] EA 32*.
 7. Section 20 (1) of the [Sexual Offences Act](#) provides:

'Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years.'
 8. Flowing from provisions of this section, the ingredients for incest are as follows:
 - a. The accused must be a male;
 - b. The victim must be a female;
 - c. She must be his daughter, granddaughter, sister, mother, niece, aunt or grandmother;
 - d. He must have knowledge of the relationship; and
 - e. There must be penetration.
 9. Though the appellant contended that he was not supplied with the witness statements, on July 1, 2020 when the matter was in court for hearing, he informed the court that he was not ready for hearing and added that he had received witness statements. This ground of appeal cannot stand.
 10. On the ground of what he calls improper arrest, he has not pointed out what was improper about his arrest. This ground has therefore no merit.
 11. The evidence of BAO was that the appellant is her father. On June 24, 2020 he went where she was with other siblings and sent them away. He then asked her to move to a bushy part of their land and



defiled her. She contended that he had previously defiled her. This was the only direct evidence against the appellant. The proviso to section 124 of the *Evidence Act* states:

'Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.'

12. In the instant case, the evidence does not indicate the reason for the trial magistrate to doubt the minor. In any case, I find that her contention was corroborated by the evidence of EO (PW2) to whom she reported.
13. When Herbart Ochieng Ouma (PW4), a clinical officer, examined the complainant he made obvious findings of defilement. I therefore find that the offence of incest was proved against the appellant. Though he contended that there were contradictions, there are none that can affect the outcome of the appeal.
14. The appellant contended that the learned trial magistrate did not consider his mitigation. The record speaks otherwise. It is indicated that his mitigation was considered. The appellant was sentenced to the minimum sentence provided. I therefore have no reasons to interfere with the sentence.
15. The upshot of the foregoing is that the appeal is dismissed for want of merits.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

