



**Nangolol v Republic (Criminal Appeal E028 of 2021)  
[2023] KEHC 18320 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 18320 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL APPEAL E028 OF 2021  
JK SERGON, J  
MARCH 2, 2023**

**BETWEEN**

**OSCAR EKIDOR NANGOLOL ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in the Senior Resident Magistrate Court at Lodwar Sexual Offences Case No. 23 of 2020 by Hon. M. K Mwangi (Senior Principal Magistrate) dated 22nd September, 2021)*

**JUDGMENT**

1. Oscar Ekidor Nangolol, the Appellant herein was tried, convicted and sentenced to serve 10 years for the offence of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#) No 3 of 2006. Being dissatisfied, the appellant preferred this appeal and put forward the following grounds of appeal.
  - a. The Honourable learned trial Magistrate erred in law and fact by failing to find and hold that the complainant (PW1) was an adult.
  - b. The Honourable learned Trial Magistrate erred in law and fact by contradicting himself when he found that PW1 is a Christian female adult and in the end holds or concludes that PW1 is a minor.
  - c. The Honourable learned Trial Magistrate erred in law and fact by disregarding medical evidence by PW3 which was to the effect that the nature of the offence was defilement with conscience which fact confirms that PW1 is an adult.
  - d. The Honourable learned Trial Magistrate erred in law and fact by failing to consider the provisions of section 8(5)(6) of the [sexual offences Act 2006](#).



2. Before delving deeper into the substance of the appeal, let me set out the brief background of the case that was before the trial court. The appellant was arraigned before the trial court to face a charge of defilement contrary to section 8(1) as read with section 8(4) of the penal code.
3. The appellant also faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act No 3 of 2006.
4. The prosecution summoned four witnesses to testify in support of its case while the appellant gave sworn testimony in support of the defence case without summoning independent witnesses.
5. In the end the learned senior Principal Magistrate found the main charge to be defective and proceeded to convict the appellant on the alternative charge.
6. Though the appellant put forward a total of four grounds of appeal, the main ground which commends itself for determination is whether the trial magistrate contradicted himself in the process of deciding the case.
7. Before the appeal was heard the appellant successfully applied to adduce additional evidence on appeal.
8. CWS appeared to testify before this court. He produced registration of birth documents relating to one BKK the complainant.
9. He stated that the Birth Certificate issued to BKK may not have been issued by his office in view of the discrepancies which were pointed out at the time of his testimony.
10. It is the submission of the Appellant that the learned Senior Principal Magistrate erred when he failed to find and hold that the complainant was an adult. He also argued that the trial magistrate fell into error by contradicting himself. It is pointed out that the trial magistrate concluded that the complainant was a female adult and at some time, he also concluded that the complainant was a minor.
11. Mr. Otieno, learned Senior Principal state Counsel did not deem it fit to submit on the issues raised by the Appellant. The record shows that the investigating officer produced a birth certificate indicating that the complainant was aged 16 years 6 months at the time of the commission of the offence.
12. The appellant has tendered additional evidence which indicates that the complainant may have been eighteen or over eighteen years at the time she had sexual intercourse with the appellant.
13. The learned Senior Principal Magistrate expressly stated in his judgment that he was satisfied that the appellant seduced a minor and had sexual intercourse leading to her getting pregnant.
14. The additional Evidence which was adduced by the Appellant has created doubt against the Prosecution's case. It is therefore not safe to maintain and sustain the appellant's conviction.
15. It is not clear whether the complainant was a minor or an adult at the time of the offence. I will give that benefit of doubt in favour of the Appellant.
16. In the end I find the appeal to be meritorious, it is allowed. Consequently, the conviction is quashed and the sentence of 10 years is set aside. The appellant is hereby set free forthwith unless lawfully held for another purpose.

**DATED, SIGNED AND DELIVERED AT LODWAR THIS 2<sup>ND</sup> DAY OF MARCH, 2023.**

.....

**J. K. SERGON**

**JUDGE**



**In the presence of:**

Biwott - Court Assistant

..... for the Appellant

..... for the Respondent

