



**PMM v Republic (Criminal Appeal E039 of 2023)
[2025] KEHC 13537 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E039 OF 2023
AN ONGERI, J
SEPTEMBER 29, 2025**

BETWEEN

PMM APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant PMM filed an application dated 9th June 2025 through his Advocate seeking the following orders:-
 - i. That the Appellant/Applicant’s Notice of Motion attached hereto be certified as urgent.
 - ii. That the Honorable Court be pleased to allow the Appellant/Applicant to adduce additional evidence in the following manner:
 - a. The Officer Commanding Wundanyi Police Station (OCS) be summoned to produce the Station’s Occurrence Book entries for the 16th February 2020 and/or for the month of February 2020 generally.
 - b. The Medical Superintendent of Wesu District Hospital be summoned to produce medical records relating to the examination of Baby BM on or about 16th February 2020.
 - c. PCM be summoned to testify on her joint visits to Wundanyi Police Station and Wesu District Hospital accompanied by the minor complainant’s mother, JTN.
 - iii. The Appellant/Applicant’s conviction and sentence be reviewed and/or vacated.
2. The application is supported by the supporting affidavit of PCM in which she deposed as follows:-



- i. That I am a Kenyan female adult of sound mind, being the holder of Kenya national identity card number 21XXXXXX3.
- ii. That I am the third born child of the late Jackson Mwawana and Beatrice Wughanga.
- iii. That I have eight siblings, of whom the Appellant PMM is the eighth born child.
- iv. That I have the authority of my said younger brother PMM the Appellant herein to swear this affidavit on his behalf.
- v. That the Appellant is currently serving a life sentence for the offence of incest contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006 arising from his conviction in Wundanyi Senior Principal Magistrate's Criminal (Sexual Offence) Case No. 17 of 2020.
- vi. That the particulars of the offence are that on 31st May 2020 at 1800hours at [particulars withheld] within Taita Taveta County, the accused person intentionally and unlawfully caused his penis to penetrate the anus of BNM aged 2/12 years, who was his daughter.
- vii. That in the alternative, the accused faced the charge of committing an Indecent Act with a child contrary to Section 11(1) of the Sexual Offences Act. No. 3 of 2006.
- viii. That prior to the alleged incident, my sister-in-law, JTN, had complained that the Appellant PMM may have defiled his daughter.
- ix. That incidentally, my sister-in-law JTN was married to the Appellant after having delivered the minor child fathered by another man.
- x. That I verily believed then that my sister-in-law the said JTN and my the Appellant were having marital problems.
- xi. That I verily believe that my sister-in-law the said JTN was accusing the Appellant falsely.
- xii. That on or about 16 February 2020, I therefore accompanied the minor complainant's mother JTN (Prosecution Witness 1) to Wesu District Hospital.
- xiii. That our joint visit to the said hospital was in furtherance of a suspicious report lodged by the said JTN at Wundanyi Police Station, in my presence, of a sexual offence incident on 27 January 2020 allegedly involving the same minor child and her father the said PMM (Appellant).
- xiv. That unfortunately, I cannot recall the relevant police OB number issued by Wundanyi Police Station on that occasion before proceeding on to Wesu Hospital later the same day.
- xv. That I was present when the minor child was subsequently examined at Wesu Hospital.
- xvi. That I verily believe that the following observations initially were noted of and concerning the minor by the Clinical Officer on 16 February 2020:

“BNM. Report to Hospital 16.2.2020 7:30p.m Mother reported that she was admitted in a hospital hence suspecting the husband”
- xvii. That upon examining the minor child, the Clinical Officer further noted the following:

“Hymen intact: BN was clam; everything was intact, including vagina, outer genitalia. Hymen intact too. Vagina and the anus normal. There was no stitching. Everything was intact. No spermatozoa seen. HIV test was non-reactive”



- xviii. That subsequently, in pursuance of a proper and meaningful defense of the Appellant herein, our Advocates on record addressed a letter dated 29 October 2024 to Wesu District Hospital requesting for the medical records pursuant to Article 35 of the Kenya Constitution 2010 (Post Rape Care Forms) arising from:
- a. The initial reports made on or about 16 February 2020 at the medical facility by the minor complainant’s mother JTN of and concerning her minor child.
 - b. Subsequent report(s) made on 1st June 2020 at Wesu District Hospital by the minor complainant’s mother JTN of and concerning her minor child.
- xix. That, Article 35 of the Constitution provides that:
- “ 35. Access to information
- (1) Every citizen has the right of access to-
 - (a) Information held by the State; and
 - (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom;
 - (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
 - (3) The State shall publish and publicize any important information affecting the nation”
- xx. That I verily believe however that Wesu District Hospital has either refused and/or neglected to furnish our Advocates with the relevant records:
- xxi. That incidentally, with regard to the minor’s medical examination on 1 June 2020, being the basis for the Applicant’s present conviction, I verily believe that the following medical observations were noted of and concerning the minor by the clinical officer:
- “ History of defilement 6 months ago. (No date of incident);
-Baby was crying a lot. (Cheap complaints);
- Genital examination of survivor; No obvious physical injuries of the body.
- Outer genitalia: missing hymen; no obvious cut/bruises;
- Examination of vagina: Hymen missing;
- Examination of anus: Cut wounds on the opening extending slightly in the rectum:
- xxii. That I verily believe that the minor’s mother the said JTN may have caused the injuries visited on her minor child BNM with malice aforethought thereby falsely insinuating and/or purporting incest by the Appellant.
- xxiii. That I verily believe that the purpose of seeking the medical records was/is clearly stated, to wit, defending the Appellant in Voi High Court Criminal Appeal Case No. E039 of 2023 and/or for purposes of the criminal revision process.



- xxiv. That I verily believe that it is in the interests of justice that the court considers the Appellant's conviction and sentence in light of the additional information and/or disturbing revelations contained herein;
- xxv. That what is deponed to herein is true, to the best of my own personal knowledge, information and belief, the full sources and particulars whereof, are fully disclosed.
3. The said PCM filed a supplementary affidavit as follows:-
- i. That I am a Kenyan female adult of sound mind, being the holder of Kenya national identity card number 216XXXX3.
 - ii. That I am the third born child of the late Jackson Mwawana and Beatrice Wughanga.
 - iii. That I have eight siblings, of whom the Appellant PMM is the eight born child.
 - iv. That I have the authority of my said younger brother PMM the Appellant herein to swear this affidavit on his behalf.
 - v. That the Appellant is currently serving a life sentence for the offence of incest contrary to Section 20(1) of the *Sexual Offences Act* No. 3 of 2006 arising from his conviction in Wundanyi Senior Principal Magistrate's Criminal (Sexual Offence) Case No. 17 of 2020.
 - vi. That the particulars of the offence are that on 31st May 2020 at 1800 hours at [particulars withheld] within Taita Taveta County, the accused person intentionally and unlawfully caused his penis to penetrate the anus of BNM aged 2/12 years, who was his daughter.
 - vii. That in the alternative, the accused faced the charge of committing an Indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006.
 - viii. That prior to the alleged incident, my sister-in-law, JTN, had complained that the Appellant PMM may have defiled his daughter.
 - ix. That incidentally, my sister-in-law JTN was married to the Appellant after having delivered the minor child fathered by another man.
 - x. That I verily believed then that my sister-in-law the said JTN and my the Appellant were having marital problems.
 - xi. That I verily believe that my sister-in-law the said JTN was accusing the Appellant falsely.
 - xii. That on or about 16 February 2020, I therefore accompanied the minor complainant's mother JTN (Prosecution Witness 1) to Wesu District Hospital.
 - xiii. That our joint visit to the said hospital was in furtherance of a suspicious report lodged by the said JTN at Wundanyi Police Station, in my presence, of a sexual offence incident on 27 January 2020 allegedly involving the same minor child and her father the said PMM (Appellant).
 - xiv. That unfortunately, I cannot recall the relevant police OB number issued by Wundanyi Police Station on that occasion before proceeding on to Wesu Hospital later the same day.
 - xv. That I was present when the minor child was subsequently examined at Wesu Hospital.



xvi. That I verily believe that the following observations initially were noted of and concerning the minor by the Clinical Officer on 16 February 2020:

“BNM. Report to Hospital 16.2.2020 7:30p.m Mother reported that she was admitted in a hospital hence suspecting the husband”

xvii. That upon examining the minor child, the Clinical Officer further noted the following:

“Hymen intact: BN was clam; everything was intact, including vagina, outer genitalia. Hymen intact too. Vagina and the anus normal. There was no stitching. Everything was intact. No spermatozoa seen. HIV test was non-reactive”

xviii. That subsequently, in pursuance of a proper and meaningful defense of the Appellant herein, our Advocates on record addressed a letter dated 29 October 2024 to Wesu District Hospital requesting for the medical records pursuant to Article 35 of the Kenya Constitution 2010 (Post Rape Care Forms) arising from:

- a. The initial reports made on or about 16 February 2020 at the medical facility by the minor complainant’s mother JTN of and concerning her minor child.
- b. Subsequent report(s) made on 1st June 2020 at Wesu District Hospital by the minor complainant’s mother JTN of and concerning her minor child.

xix. That, Article 35 of the Constitution provides that:

“ 35. Access to information

(1) Every citizen has the right of access to-

(c) Information held by the State; and

(d) Information held by another person and required for the exercise or protection of any right or fundamental freedom;

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

(3) The State shall publish and publicize any important information affecting the nation”

xx. That I verily believe however that Wesu District Hospital has either refused and/or neglected to furnish our Advocates with the relevant records:

xxi. That incidentally, with regard to the minor’s medical examination on 1 June 2020, being the basis for the Applicant’s present conviction, I verily believe that the following medical observations were noted of and concerning the minor by the Clinical Officer:

“ History of defilement 6 months ago. (No date of incident);

.....Baby was crying a lot. (Cheap complaints);

Genital examination of survivor; No obvious physical injuries of the body.

Outer genitalia: missing hymen; no obvious cut/bruises;



Examination of vagina: Hymen missing;

Examination of anus: Cut wounds on the opening extending slightly in the rectum:

- xxii. That I verily believe that the minor's mother the said JTN may have caused the injuries visited on her minor child BNM with malice aforethought thereby falsely insinuating and/or purporting incest by the Appellant.
- xxiii. That I verily believe that the purpose of seeking the medical records was/is clearly stated, to wit, defending the Appellant in Voi High Court Criminal Appeal Case No. E039 of 2023 and/or for purposes of the criminal revision process.
- xxiv. That I verily believe that it is in the interests of justice that the court considers the Appellant's conviction and sentence in light of the additional information and/or disturbing revelations contained herein;
4. The application was canvassed by written submissions as follows:
5. The applicant submitted that PMM seeks the revision of his conviction and sentence for the offence of Incest. He was convicted in Wundanyi Senior Principal Magistrate's Court and sentenced on 2nd August 2023.
6. The applicant specifically requests leave to adduce additional evidence, which includes summoning the Wundanyi Police Station Commander to produce Occurrence Book entries for February 2020, the Medical Superintendent of Wesu District Hospital to produce medical records for the minor complainant, Baby BM, and the appellant's sister, PCM, to testify regarding a joint visit to the police station and hospital with the complainant's mother on 16th February 2020.
7. The case against the appellant rested primarily on the testimony of the minor's mother, PW1 JTN, who claimed to have found the child frightened and formed the opinion that she had been defiled.
8. The appellant, in his defence, denied the offence, stating he had left the child sleeping and later discovered his wife and child were missing from the home. He alluded to a serious feud with a former girlfriend which had created a tense atmosphere and suggested the child was too young for coherent speech.
9. That the appellant's account was corroborated by several witnesses, including a church pastor (DW2) who testified that PW1 had previously threatened to have the appellant imprisoned over his alleged infidelity.
10. That other witnesses, including the appellant's mother (DW3) and a neighbour (DW4), confirmed seeing PW1 leave the compound with the child and noted the child showed no signs of distress the following morning.
11. Further, that the new evidence sought to be introduced reveals that, months before the alleged incident, PW1 had previously taken the minor to Wesu District Hospital on 16th February 2020, accompanied by the appellant's sister, alleging a sexual offence by the appellant
12. That an unofficial review of the hospital records from that date indicates the clinical officer found the minor's hymen intact, her genitalia and anus normal, with no physical injuries or spermatozoa present.
13. That the appellant's advocates have formally requested these records, but the hospital, through its lawyers, has failed to provide them. This prior, unfounded report is crucial as it demonstrates a pattern of false allegations by PW1.



14. That in contrast, the medical report from 1st June 2020, which formed the basis of the conviction, noted a missing hymen and anal injuries, yet the history given was vague. That this discrepancy creates a high probability that the injuries were inflicted maliciously by PW1 to frame the appellant.
15. The application is grounded in the High Court's revisionary powers under Section 364 of the *Criminal Procedure Code*, which is properly invoked as an appeal is pending. The principles for admitting additional evidence, as established in the Jirongo case, are satisfied here: the evidence is directly relevant and credible; it could not have been obtained earlier with due diligence as it was withheld by the hospital; it is not being used to fill gaps but to expose a willful deception of the court; and it would significantly impact the case's outcome by revealing a prior false allegation.
16. That therefore, it is in the interest of justice for the court to exercise its revisionary powers, allow the application to admit the additional evidence, and subsequently re-evaluate the conviction and sentence.
17. The Respondent did not file any submissions.
18. The issues for determination in the application dated 9th June 2025 are as follows;
 - i. Whether the Appellant should be granted leave to adduce additional evidence in his pending appeal.
 - ii. Whether this court should proceed to review and vacate his conviction and sentence based on the proposed new evidence.
19. The application is anchored on the supporting and supplementary affidavits of PCM, the Appellant's sister, who deposes to facts concerning a prior, allegedly unfounded report made by the complainant's mother.
20. The principles governing the admission of additional evidence on appeal are well settled. The court must be satisfied that the evidence sought to be adduced could not have been obtained with reasonable diligence for use at the trial; that the evidence is apparently credible in that it is capable of belief; and that it is such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive.
21. In the present matter, the Appellant seeks to summon three sets of evidence: the Occurrence Book entries from Wundanyi Police Station for February 2020; the medical records from Wesu District Hospital relating to an examination of the minor on 16th February 2020; and the oral testimony of his sister, PCM.
22. The depositions by PCM allege that she accompanied the complainant's mother, JTN (PW1), to the police station and subsequently to the hospital on 16th February 2020, months before the incident for which the Appellant was convicted.
23. She avers that the medical examination conducted on that date revealed the minor's hymen was intact, her genitalia and anus were normal, with no injuries or spermatozoa present.
24. That this stands in stark contrast to the medical report of 1st June 2020, which noted a missing hymen and anal injuries and formed the basis of the conviction.
25. The Appellant contends that this prior report and its negative findings demonstrate a pattern of false allegations by PW1, whom he alleges was motivated by marital discord.



26. He further asserts that his advocates' attempts to obtain the February 2020 medical records from Wesu District Hospital were unsuccessful, thereby satisfying the requirement that the evidence could not have been obtained earlier with due diligence.
27. Further, that the proposed evidence is, on its face, directly relevant and credible as it goes to the heart of the complainant's credibility and the possibility of a malicious frame-up. If believed, it would undoubtedly have a significant influence on the court's re-evaluation of the evidence, as it suggests that PW1 had previously attempted to lodge a similar complaint which was medically unsupported.
28. This court finds that the Appellant has met the threshold for the admission of additional evidence.
29. Furthermore, this court's revisionary jurisdiction under Section 364 of the *Criminal Procedure Code* is properly invoked in this instance, as there is a pending appeal.
30. The power of revision is discretionary and is exercised to correct a manifest error or injustice. The allegations raised here, of a prior unfounded report, are serious and, if proven, would point to a potential miscarriage of justice that warrants the court's intervention at this stage.
31. Consequently, the application dated 9th June 2025 is merited. The Appellant is hereby granted leave to adduce the additional evidence as prayed.
32. The Officer Commanding Station, Wundanyi Police Station, and the Medical Superintendent of Wesu District Hospital are summoned to produce the Occurrence Book entries for 16th February 2020 and the medical records for Baby BM from the same date, respectively.
33. PCM is also summoned to testify regarding the events of that day.
34. This matter shall be listed for a hearing date to receive the said evidence.
35. The prayer for the court to review and vacate the conviction and sentence at this juncture is premature and will be considered afresh after the additional evidence has been tendered and evaluated.
36. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF SEPTEMBER, 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistant: Millicent/Mabishi

Mr. Mwanyumba for the Applicant

The Applicant present at Manyani GK Prison

