



**Mbiu alias Mutave v Republic (Criminal Appeal E057 of 2023)
[2025] KEHC 14740 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E057 OF 2023
KW KIARIE, J
OCTOBER 22, 2025**

BETWEEN

ONESMUS NDETI MBIU ALIAS MUTAVE APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E069 of 2021 of the Senior Principal Magistrate's Court at Makindu by Hon. J.D. Karani –Senior Resident Magistrate)

JUDGMENT

1. Onesmus Ndeti Mbiu alias Mutave, the appellant herein, was convicted of the offence of rape contrary to section 3(1) as read with section 3 (3) of the *Sexual Offences Act* No.3 of 2006.
2. The particulars of the offence were that on the 15th day of July 2021 at (particulars withheld) market, (particulars withheld) subcounty within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of P.M.Y. by use of threats.
3. The appellant was sentenced to serve ten years' imprisonment. He was aggrieved and has appealed against both conviction and sentence. He was in person and raised grounds of appeal as follows:
 - a. The learned trial magistrate erred in both law and fact by convicting the appellant on evidence that did not meet the required standard of proof beyond a reasonable doubt.
 - b. The trial magistrate erred in both law and fact by trying, convicting and sentencing the appellant on a defective charge sheet with ambiguous facts which were replete with incurable errors.
 - c. The learned trial magistrate erred in law and fact by failing to observe and put into consideration that the complaint's (PW1) evidence was brimful of inconsistencies, contradictions and unrealistic statements.



- d. The investigation was apparently shoddy; thus, it could not be relied on.
 - e. The defence tendered was not considered, and the same trial magistrate erred in both law and fact by shifting the burden of proof to the appellant, contrary to the laid down rule that the burden of proof is on the prosecution throughout the trial.
 - f. The learned trial magistrate failed to appreciate that the key ingredients of rape were not well established.
 - g. The learned trial magistrate relied heavily on circumstantial evidence and tilted section 124 of the Evidence Act in favour of the complainant while blatantly dismissing my defence, thus rendering an opinionated judgment.
4. The state did not file any grounds of opposition or submissions.
 5. This is a first appellate court. As expected, I have analysed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of Okeno vs the Republic [1972] EA 32.
 6. Although the appellant argued that the charge was defective, I have not identified any defect. This ground of appeal is dismissed.
 7. The ingredients of the offence of rape are set out in section 3 of the Sexual Offences Act, which states as follows:
 - A person commits the offence termed rape if—
 - (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
 - (b) the other person does not consent to the penetration; or
 - (c) the consent is obtained by force or by means of threats or intimidation of any kind.
 8. (PW1), the complainant, stated that around 3 a.m., she was woken up by a noise at her window. She switched on her phone torch. The window had been smashed. The person outside, whom she later identified as the appellant, grabbed her hand and ordered her to hand over the torch, which she did. He threatened to cut her hand with the glass if she did not open the door. She opened it out of fear. The appellant took the keys to her workplace from her clothes, stripped her, and pushed her onto the bed. He raped her. He was inside her room until 6.50 a.m.
 9. Before he left, he returned to her the phone and the keys. He threatened to cut her neck if she reported. She escorted him to the gate and opened it for him. It was at this juncture that he identified himself to her as Onesmus Ndeti. She then reported the matter.
 10. Cornelius Mutua Mutiso (PW2), the Mulaa location chief, testified that at about 6.45 a.m., he received a report from the employer of the complainant that Onesmus Ndeti Mbiu had raped her. He went to the scene the same morning and interviewed the complainant. He also saw the broken window. He involved the community policing personnel. The appellant outmanoeuvred them and escaped. He was arrested two days later.



11. Daniel Mutuku (PW3) is a clinical officer at Sultan Hamud Sub-County Hospital. His evidence was that he examined the complainant on the 15th day of July 2021. She sustained a bruise on the posterior wall of the vagina that had bled. He concluded that she had been raped.
12. Onesmus Ndeti Mbiu, the appellant, contended in his defence that he was falsely implicated by her uncle, who was the complainant's employer, after an argument.
13. In most sexual offence cases, we rarely have eyewitnesses. This is why the proviso to section 124 of the *Evidence Act* was enacted. It 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.

Having reviewed the evidence on the file, I have found that the trial magistrate had no grounds to doubt the complainant's account. The appellant did indeed rape her.
14. Section 3 (3) of the *Sexual Offences Act* provides the sentence for the offence of rape in the following terms:

A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.
15. The appellant was sentenced to serve ten years' imprisonment. This court has not been shown that the learned trial magistrate acted upon any incorrect principle or overlooked any material factor. I have no grounds to interfere with the sentence.
16. The appeal is without merit, and I therefore dismiss it.

DELIVERED AND SIGNED AT MAKUENI, THIS 22ND DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE

