



REPUBLIC OF KENYA



**Kibet v Republic (Criminal Appeal E009 of 2025)  
[2025] KEHC 16216 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 16216 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E009 OF 2025  
JR KARANJA, J  
OCTOBER 30, 2025**

**BETWEEN**

**HILLARY KIBET ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being and appeal against both conviction and sentence from the judgment delivered on 22nd May 2023 by Hon. F. Nyakundi, Principal Magistrate in Criminal Case Sexual Offence Case No. E035 of 2023 in Kericho Chief Magistrate's Court)*

**JUDGMENT**

1. Following the conviction and sentence of the Appellant, Hillary Kibet, by the Principal Magistrate at Kericho for the offence of rape, Contrary to Section 3[1][a][b][3] of the *Sexual Offences Act*, the present appeal was filed on the basis of the grounds set out in the petition of appeal filed herein on 24<sup>th</sup> February 2025 as amended on 23<sup>rd</sup> October 2025.
2. The Appellant was upon conviction sentenced to nine [9] years imprisonment. The pre-sentence report dated 19<sup>th</sup> May 2-23 submitted to the court at the time of the sentence was apparently unfavourable for a non-custodial sentence due to the serious nature of the offence.
3. It was alleged that the Appellant raped WK, an adult person aged fifty [50] years. He was in the alternative charged with committing an indecent act contrary to Section 11 [a] of the Sexual Offence Act. He denied both counts and underwent a full trial leading to his conviction and sentence. This appeal is an expression of his dissatisfaction with that outcome. The offences allegedly occurred on 2<sup>nd</sup> July 2022 at [Particulars Withheld] Village - Sigowet, Kericho County.
4. At the hearing of the appeal, Learned Counsel, Mr. Towett, represented the Appellant and placed full reliance on his written submissions filed herein on 23<sup>rd</sup> October 2025 which were enhanced by his oral



submissions to the effect that the gravamen of the appeal was the medical report inasmuch as it did not prove the fact of penetration and could not therefore corroborate the Complainant's evidence which was therefore unreliable and unsafe for a conviction.

5. The Learned Prosecution Counsel, Mr. Ogutu represented the State/ Respondent and did apparently agree with the Appellants submissions. Accordingly, the Learned Prosecution Counsel conceded the appeal.

This court is not necessarily bound by the concession. Its duty as a first appellate court was to revisit the evidence and draw its own conclusion bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

6. In that regard as may be deciphered from the typed judgment of the trial court, the prosecution case was based on the evidence of the Complainant WK [PW1] and four other witnesses inclusive of Simion Chepkwony [PW2], a businessman and a doctor, Robert Langat [PW3]. The other witnesses were Charles Kimei [PW4] and the investigating officer, CPL Robert Kirui [PW5].
7. The Appellant's defence case was a denial and a contention that he was a driver and was at his home on 6<sup>th</sup> October 2022 when the police arrested him for non-payment of his father's hospital bill. He was thereafter charged in court with the present offence.
8. The trial court considered the evidence in its totality and arrived at the conclusion that the main count of rape was duly proved by the prosecution beyond reasonable doubt.

Basically, the offence of rape falls under Section 3 of the Sexual Offence Act. Thus, a person commits rape if he commits intentionally and unlawfully an act which causes penetration with his genital organs and without the consent of the other person or the consent is obtained by force, threats or intimidation. [See, Section 3[1][a][b] and [c] of the *Sexual Offences Act*.

9. This definition of rape brings out two vital ingredients of the offence i.e. penetration and consent. The Complainant [PW1] alleged that the Appellant raped her on the material date at about 10:00pm when they met as she was returning to her house from a shop. She said that he struggled and dragged her next to a tarmac road and raped her.
10. Simion [PW2], an uncle to the Appellant allegedly arrived at the scene and found the Appellant on top of the Complainant. His son, Charles [PW4] also said that he saw the Appellant on top of the Complainant and that they were engaging in sexual intercourse.

The Appellant's defence implied that the aforementioned witnesses were not telling the truth and that they implicated him without good reasons.

11. The evidence by the doctor [PW3] somehow vindicated the Appellant in establishing and proving that if anything, the Complainant was assaulted and not raped or sexually assaulted by the Appellant. The medical examination report [P. Exhibit 3] disproved the Complainant's allegations of rape. Her witness [PW2 and PW4] could not therefore have corroborated the allegation. Their evidence against the Appellant was thus devoid of credibility and unreliable and so to, was the Complainant's evidence.
12. The medical report [P3 form] clearly indicated that the examination carried out on the Complainant did not reveal anything substantial to the offence of rape. There was not penetrative sexual action against the Complainant. Ironically, instead of being charged with assaulting the Complainant [if at all], the Appellant was charged with rape thereby revealing a conspiracy between the Complainant and her witness to frame the Appellant and have him charged with such a serious offence as rape which



attracts a minimum sentence of ten [10] years imprisonment in accordance with Section 3[3] of the *Sexual Offences Act*.

13. The sentence imposed against the Appellant by the trial court of nine [9] years imprisonment was not a proper sentence. Instead of increasing the prescribed sentence, the trial court reduced it by one [1] year.

Be that as it may, the ultimate finding of this court is that the prosecution evidence against the Appellant was insufficient and devoid of credibility in establishing the material ingredients of the offence of rape against the Appellant.

14. In the circumstances, the Appellant's conviction by the trial court was neither sound nor safe and is hereby quashed with the result that the sentence of nine [9] years imposed upon the Appellant must and is hereby set aside.

The Appellant is forthwith set at liberty to "fly like a blue bird in the sky" unless otherwise lawfully held.

Ordered accordingly.

**DELIVERED AND DATED THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. J. R. KARANJAH,**

**JUDGE**

