



**Kianga v Republic (Criminal Appeal E087 of 2024)
[2025] KEHC 14775 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E087 OF 2024
KW KIARIE, J
OCTOBER 23, 2025**

BETWEEN

MWILU AKATA KIANGA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E025 of 2022 of the Principal Magistrate's Court at Kilungu by Hon. G. Okwengu –Senior Resident Magistrate)

JUDGMENT

1. Mwilu Akata Kianga, 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 22nd day of August 2022 at [Particulars Withheld], Kilungu subcounty within Makueni County, he intentionally and unlawfully caused his penis to penetrate the vagina of P.S.K. without her consent.
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 law and fact when he convicted and sentenced me without observing that the charges before the court were defective for both being in great variance with the evidence on the record.
 - b. The learned trial magistrate erred in law and fact by sentencing me without considering that there was no evidence to prove the offence of rape to the required standard in criminal law of beyond a reasonable doubt, and he entirely relied on hearsay evidence.
 - c. The learned trial magistrate erred in both law and fact by shifting the burden of proof to the appellant and misdirected himself on the evidence and arrived at the wrong conclusion.



- d. The learned trial magistrate erred in law and fact in failing to note and consider a myriad of inconsistencies and contradictions in the prosecution's case.
 - e. The learned trial magistrate erred in law and fact when he failed to consider that the trial was so factually simple for the layman, like the appellant, to be able to follow up the case. Yet, he was not served with a witness statement contrary to Section 50(c) of *the Constitution* of Kenya, 2010.
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. The evidence of P.S.K. (PW1), the complainant, was that while she was looking after some sheep, they strayed. She went to find them, and it was then that she saw the appellant cutting some sisal. He grabbed her and raped her. She reported the matter to her employer, and with their assistance, the appellant was traced. During cross-examination, she denied that he had paid her in exchange for sexual intercourse.
 9. Christine Katuma Kyenza (PW2) testified that when she found the complainant, who was her sheep's shepherd, she began to cry. She explained that she had been raped by someone who was cutting sisal. With the help of the appellant's employer, the appellant was traced, and the matter was reported to the police.
 10. Erick Kasamani (PW3) is a clinical officer at Kilungu Hospital. His evidence was that he examined the complainant on 22 August 2022. She had a broken hymen and lacerations on the labia majora. There was semen and a transmissible disease present. He concluded that she had been raped. The complainant was examined and was found to have a transmissible disease.
 11. Mwilu Akata Kianga, the appellant, chose to remain silent at the end of the prosecution's case.
 12. There was overwhelming evidence on record against the appellant.
 13. 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.



14. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *JAMES Vs. REX* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R Vs. ShershewsitY* (1912) C.CA 28 T.LR 364.

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 23RD DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE

