Mwangangi v Republic (Criminal Appeal E089 of 2024) [2025] KEHC 14889 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14889 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

CRIMINAL APPEAL E089 OF 2024

KW KIARIE, J

OCTOBER 23, 2025

BETWEEN

BONFACE MUTUA MWANGANGI .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(From the original conviction and sentence in S.O. Case NO. E018 of 2021 of the Chief Magistrate's Court at Makueni by Hon. J. Mwaniki–Chief Magistrate)

JUDGMENT

1. Bonface Mutua Mwangangi, the appellant herein, was convicted after pleading guilty to the offence of rape contrary to section 3 [1] [a] [b] [3] [sic] of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence are that on the 4th day of August, 2021, at Thangathi village, Kaumoni sub-location, Makueni sub-County within Makueni County, intentionally and unlawfully caused his penis to penetrate the vagina of E.K., without her consent.
3. The appellant was sentenced to twelve years' imprisonment. He was aggrieved and filed this appeal against both the conviction and the sentence. He was in person and raised grounds of appeal as follows:
   a. The learned trial magistrate erred in law and in fact by failing to note that the appellant's rights to a fair trial were violated, and this rendered the whole process null and void.
   b. The learned trial magistrate erred in matters of both law and fact by sentencing the appellant herein to an excessively harsh and illegal sentence, thereby leaving his sentence unsafe.
   c. The learned trial magistrate erred in both matters of law and in fact by failing to find that the prescribed minimum sentence in a rape conviction is ten [10] years
4. The state did not file any grounds of opposition to the appeal.

5. This is a first appellate court. As expected, I have re-analysed and re-evaluated all the evidence presented before the lower court, and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of Okeno v Republic [1972] EA 32.

6. The charge was incorrectly drafted. It should have read:

> ...contrary to section 3[3] of the *Sexual Offences Act*.

Upon reviewing the record, I find that the appellant was not prejudiced in any way. He fully participated in the proceedings. The error is therefore curable under section 382 of the Criminal Procedure Code.

7. Article 50 [2] [j] of *the Constitution* provides as follows:

> Every accused person has the right to a fair trial, which includes the right—
>
> [j] to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;

8. Since the appellant pleaded guilty to the offence, this provision did not apply in his case.

9. Section 348 of the Criminal Procedure Code provides as follows:

> No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

I will, therefore, endeavour to establish the legality of the sentence, bearing in mind that 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 v 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 v 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 v Shershewsity [1912] C.CA 28 T.LR 364.

10. Section 3 [3] of the *Sexual Offences Act* provides as follows:

> 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.

11. The appellant was sentenced to twelve years. 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. I therefore have no basis to interfere with the sentence. The appeal is dismissed.

DELIVERED AND SIGNED AT MAKUENI, THIS 23RD DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE