



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CRIMINAL APPEAL NO. E032 OF 2025**

**JOSEPH KIMANI NG'ANG'A.....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E038 of 2023 of the Senior Principal Magistrate's Court at Ol Kalou by Hon. Judicaster Nthuku –Principal Magistrate)*

**JUDGMENT**

1. Joseph Kimani Ng'ang'a, 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 5<sup>th</sup> day of July 2023 at Muniyuni in Kipipiri within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of P.N.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 appealed through the firm of Ndegwa Wahome & Company Advocates. He raised grounds of appeal as follows:
  - a) The learned trial magistrate erred in both law and facts by finding conviction against the appellant against the weight of evidence on record, which was manifestly insufficient, inconsistent and had glaring gaps, hence incapable of sustaining a conviction.
  - b) The learned trial magistrate erred in both law and in fact by failing to appreciate that the main ingredients of the offence charged had not been proven to the required degree by the prosecution.
  - c) The learned trial magistrate erred in both law and in fact by failing to find that the evidence by the prosecution did not support the charge against the appellant.

- d) The learned trial magistrate erred in law and in fact in failing to find that the complainant's evidence was not corroborated by any sufficient evidence of the other prosecution witnesses.
  - e) The learned trial magistrate erred in law and in fact by relying on extraneous matters that were not part of the record and further disregarded material evidence on record to find a conviction against the Appellant.
  - f) The learned trial magistrate erred in both law and in fact by failing to find that crucial and material prosecution witnesses were left out and never testified, which default should have been resolved in favour of the appellant.
  - g) The learned trial magistrate erred in law in failing to give due and/or adequate consideration to the appellant's defence.
  - h) The learned trial magistrate erred in both law and fact by passing a sentence which was manifestly harsh and excessive in the circumstances.
4. The state opposed the appeal through Odera Vena. She argued that the prosecution proved its case to the required standards.
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. 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.***
7. The complainant, the appellant, and two friends went out to dine and drink. Around 7 p.m., the complainant needed to use the restroom. She asked Faith to accompany her, but the appellant volunteered, and she agreed. Outside, she fell and lost her glasses. The appellant suggested she use a nearby open cabin as a toilet. She entered, and he locked her inside before joining her and raping her. After the assault, he locked the door from the outside. She knocked several times, and eventually someone opened it for her.

8. Joseph Kimani Ng'ang'a, the appellant, argued that the sexual intercourse was consensual. The complainant asked for Kshs. 2000 for the data, but he told her he would pay her once his phone was charged.
9. Raphael Methu (PW2) and a friend of the appellant testified that at about 8 p.m. The appellant took her, but they took a long time to return. The appellant returned and was searching for the complainant's specs. Shortly, the complainant returned while crying and had soiled herself. She alleged that the appellant had raped her. He, however, added that she heard her say that they had agreed to have sex and the appellant was to give her a token. During cross-examination, he said he saw the complainant and the appellant kissing. Other than taking alcohol, they were also taking Velo. He also added that he overheard her tell Faith that they had agreed to have sex.
10. Dr Winny Ndegwa (PW6) is a medical officer at Engineer County Hospital. Her evidence was that she examined the complainant on July 7, 2023. She had scratch marks on her back and her left hand. There was a suture at the perineum from a previous sexual encounter. There was nothing in the genitals to suggest that the sexual intercourse was not consensual.
11. The prosecution introduced contradictory evidence, and there was no attempt to reconcile the same. The evidence of the complainant and that of Raphael Methu (PW2) did not agree on whether the sexual congress between the complainant and the appellant was consensual or not. Consent is a key ingredient that the prosecution must prove beyond a reasonable doubt. This was therefore not done. The benefit of doubt should have been resolved in favour of the appellant.
12. The upshot of the preceding analysis of the evidence is that the conviction was unsafe. I quash the conviction, set aside the sentence, and set the appellant at liberty unless lawfully held.

**Delivered and signed at Nyandarua, this 30<sup>th</sup> day of October 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**