



REPUBLIC OF KENYA



**Nzomo v Republic (Criminal Appeal E031 of 2025)
[2025] KEHC 16014 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL APPEAL E031 OF 2025
NIO ADAGI, J
NOVEMBER 6, 2025**

BETWEEN

PAUL MAINGI NZOMO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal on conviction and sentence in Chief Magistrate 's Court
at Kangundo in S.O No. E003 of 2024 delivered on 5th August, 2024)*

JUDGMENT

1. The Appellant Paul Maingi Nzomo was charged with two Counts. In Count 1, he was charged with the offence of Rape contrary to Section 3(1) (a) (b) & (3) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars are that on 2nd day of August 2024 at [particulars withheld] in Kangundo Sub-county within Machakos County intentionally and unlawfully caused his penis to penetrate both the vagina and anus of WM (name withheld) without her consent.
2. In Count 2 the Appellant was charged with grievous harm contrary to Section 234 of the [Penal Code](#). The particulars are that on 2nd August 2024 at [particulars withheld], within Machakos county unlawfully did grievous harm to WM (name withheld).
3. The Appellant was arraigned before the Magistrate's Court at Kangundo in Sexual Offence Case No. E033 of 2024 on 5th August 2024.
4. The trial court's record shows that the language used was Kiswahili.
5. The record also shows that the gravity of the sentence was explained to the Appellant and the charges were read over to him for which he pleaded guilty to both Count I and Count 2 by stating in Kiswahili that the charges were true. The trial court then recorded the plea of guilty entered for the Appellant on both Counts.



6. The record further shows that the nature and gravity of the sentence was explained to the Appellant as follows:-

“the accused is informed that the sentence in Count I is 10 years while the sentence in Count 2 will depend on the injuries and may exceed 5 years”

7. The Prosecution then proceeded to read the facts to the Appellant as follows:-

“On 2/8/2024. At around 1.00 am, the Complainant was asleep when she heard noises outside. While she was attentive to the noise, she saw the accused, a person she knows, enter the house through the window. The accused started strangling her and when she struggled, she was injured on the face. She tried to bite the finger of the accused and scratch his face and that is when the accused took a mosquito net and covered her face. The Complainant was unable to rescue herself. The accused removed her clothes and also undressed and penetrated her vagina and anus without her consent. When he was through, he took the Complainant’s torch and exited through the same window. The Complainant was injured in her vagina. When the day broke, the Complainant went to the neighbour’s house and reported what had happened. The neighbour alerted police from Kitwii Patrol Base and they responded together with the Assistant Chief, Nicholas Munyao. They interrogated the Complainant and took her to Kitwii Patrol Base where she recorded her statement. The Complainant was escorted by Eunice. The Complainant was referred to Kangundo Police Station where she was interrogated further and taken to Kangundo Level 4 hospital where she was treated and the P3 form filled. On 3/8/2024, the Investigating Officer went to the scene with other Police Officers. The accused was arrested and charged. The P3 form was produced as PExt.1”

8. When asked whether the facts as read were true, the Appellant answered that what the Prosecutor had said was true.

9. The Complainant/Victim who was also in attendance in court sought to be given an opportunity to speak. She stated as follows:-

“I am 52 years old. I am very bitter and I want God to help me. I am thankful to Kangundo Police Station and Kitwii Police Station. The issues started in 2012 and the accused and his group are arrested and when they are brought to court, we are forced to reconcile. They threatened to assault me. I have proceedings. I have reported many cases. The accused threatened to have me raped and he did it. I want the court to take its course. The accused was accompanied by Matei who stood outside. The accused entered my house and raped me through the vagina and anus. I really prayed to God.”

10. The Prosecutor invited the trial court to consider what the Complainant had said and allow the law to take its course. They would follow up on the other people she had named.

11. The Appellant was then convicted on his own plea of guilt. The Prosecutor stated that the Appellant had no records.

12. In mitigation the Appellant stated that it was the devil who made him do that.

13. While passing sentence the trial court observed that she had considered the charge, the facts to which the accused had conceded he had committed a Sexual Offence which is a serious offence in Kenya and the world at large and that is why the *Sexual Offences Act* was enacted to address the pandemic. The Complainant had spoken and she was very bitter with the accused with whom she seems to have a



turbulent relationship and some of this has been in court. The trial court state that she had considered the law and proceeded to sentence the Appellant to 10 years imprisonment for Count I and a fine of Kshs.300,000/= or 4 years in jail for Count 2 and the sentences were to run consecutively.

14. The Appellant has now filed this appeal through an undated Petition of Appeal. The appeal is on both conviction and the sentence on the following grounds:
 - a. That the learned trial Magistrate erred in both fact and law by explicitly not explaining to the Appellant the consequences of his plea of guilt.
 - b. That the learned trial Magistrate failed to observe that the charges and all the essential ingredients of the offences were not explained to the Appellant in his language or in a language he understands.
 - c. That the learned trial Magistrate erred in matters of law and fact by failing to order that the 10 years sentences meted for the offence of Rape c/s 3 of the *SO Act* and 4 years for the offence of grievous harm c/s 234 of the *Penal Code* to run concurrently.
15. Directions were given for the Appeal to be canvassed through written submissions. The Appellant filed undated submissions while the Respondent/Prosecutions' submissions are dated 28th May 2025 filed by the learned State Counsel Ms. Agatha Abang.

Analysis and Determination.

16. This is a first appeal. The duty of the first appellate court is to reconsider and re-evaluate the evidence before the trial court and make its own conclusions but bearing in mind that it did not see or hear the witnesses (see *Okeno -vs- Republic* 1972 EA).
17. I have carefully considered the trial court's record, the grounds of appeal and the Parties' respective submissions. The single issue for my determination is whether the appeal is merited. In so determining, I will consider each of the three grounds of appeal raised by the Appellant.

a. Whether the Consequences of Plea of Guilt Were Not Explained to the Appellant

18. The trial record shows that the gravity of the sentence was explained to the Appellant and the charges were read over to him to which he pleaded guilty to both Count I and Count 2 by stating in Kiswahili that the charges were true. The trial court then recorded the plea of guilty entered for the Appellant on both Counts.
19. The record further shows that the of the nature and gravity of the sentence was explained to the Appellant as follows:-

“the accused is informed that the sentence in Count I is 10 years while the sentence in Count 2 will depend on the injuries and may exceed 5 years”
20. The Prosecution then proceeded to read the facts to the Appellant and he answered that the facts were true as read by the Prosecutor. I find this ground of appeal to be without merit.

b. Whether the Charges and All the Essential Ingredients of the Offences Were Not Explained to the Appellant in His Language or in a Language He Understands.

21. On this issue, I observe that the trial court's record shows that the language used was Kiswahili and that the Appellant did not request for the proceedings to be conducted in any other language. In fact, the Appellant responded to the charges and facts in Kiswahili. The Appellant cannot now be heard to



be alleging that the charges and all the essential ingredients of the offences were not explained to him in his language or in a language he understands.

This ground is therefore an afterthought that this court declines to entertain.

22. The record further shows that the of the nature and gravity of the sentence was explained to the Appellant as follows:-

“ the accused is informed that the sentence in Count I is 10 years while the sentence in Count 2 will depend on the injuries and may exceed 5 years”

23. The Prosecution then proceeded to read the facts to the Appellant and he acknowledged that the facts were true as read by the Prosecutor.

24. Section 207 of the *Criminal Procedure Code* outlines the procedure that is to be followed during plea taking. It provides that:

- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.
- (2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

25. This section provides that when an accused person pleads guilty the admission should be recorded as nearly as possible in the words he used and the accused sentenced. The prosecution is also awarded an opportunity to outline to the court the facts upon which the charge is founded. In *Jackson Wambua v Republic* [2022] eKLR Odunga J (as he was then) in quoting *Ombena v Republic* [1981] eKLR stated that the Court of Appeal outlined the manner of recording plea of guilty by quoting:

“In *Adan v Republic* [1973] EA 445. the Court of Appeal laid down in the simplest and plainest terms the manner in which pleas of guilty should be recorded and the steps which should be followed. It is appropriate to set out the holding in full — 'Held:

- i. the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;
- ii. the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;
- iii. the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts; (iv) if the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered;
- v. if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused 's reply, should be recorded.”



26. Having outlined what is on the trial court's record on how plea was taken, I am convinced that the provisions of Section 207 (1) and (2) of the *Criminal Procedure Code* were followed. The record reflects that the Appellant was explained to the charges in a language that he understands which is Kiswahili and that is the same language that he responded in. Following the authorities quoted above, the trial court also took further caution to explain to the Applicant the gravity of the offence and the sentence he would face would he wish to plead guilty. The gravity of the offence was explained to the Appellant before he took plea and also after the facts of the case were read out to him. The Appellant was fully aware of the charges he was facing and the possible sentences he was to face if he chose to continue with his plea of guilt.
27. It is my finding that the plea of guilty entered by the trial court was therefore unequivocal making the conviction safe.
28. The conviction and sentence of the Appellant arise from his plea of guilty, Section 348 of the *Criminal Procedure Code* bars appeal from subordinate courts where an accused was convicted upon plea of guilty except on the extent and legality of sentence by providing that:
- “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 and legality of the sentence”.
29. In the case of *Olel v Republic* [1989] KLR 444, it was held that:-
- “Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the *Criminal Procedure Code* (Cap 75) does not merely limit the right of appeal in such cases but bars it completely”
30. Odunga JA in *Anthony Muthonga Munene v Republic* [2022] eKLR stated that:
- “It follows that the Applicant is, by virtue of this section, and authority, barred from challenging the conviction and his only recourse was to challenge the extent or legality of the sentence imposed on him by the trial court, that bar, in my view only operates where the plea is unequivocal.”

c. Whether the Sentences of 10 Years Imprisonment Meted for the Offence of Rape Contrary to Section 3 of the Sexual Offences Act and a Fine of Kshs.300,000/= In Default 4 Years for the Offence of Grievous Harm Contrary to Section 234 of the Penal Code are to Run Concurrently.

31. Section 3 (a)(b)(3) of the *Sexual Offence Act* provides:
- “Rape”
1. 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
 3. 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.



32. Section 234 of the *Penal Code* provides that:

“Grievous harm”

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life”

33. The Appellant pleaded guilty to the charges as read out to him. He pleaded guilty and confirmed the facts were true. He was thus convicted on his own plea of guilt and was rightfully sentenced as well. The facts of the case as read did prove the ingredients of the offense against the Appellant and further the prosecution produced the P3 form as PExt.I that showed the injuries “harm”.

34. The Appellant raped a 52-year-old woman. He sneaked into her house and almost killed her; he overpowered her and raped her in an inhumane way both at the vagina and anus. The Appellant was well aware of what he was doing and it was a heinous act.

35. The trial court had the privilege of seeing and hearing from the Complainant who is said to have been very bitter about what was done to her and the trial court took all these into consideration. The Appellant blamed the devil for his actions and was not remorseful, he took advantage of an old lady and seemed not to have learnt from his lessons in previous cases reported by the Complainant.

36. This court on its mandate is obligated to interrogate if the sentence was indeed appropriate and lawfully. I have undertaken that mandate and come to the conclusion that while the trial court was entitled to mete out up to life sentences, for both offences separately, the imprisonment terms imposed were very modest and lenient. There is no justification for me to interfere even with the sentence.

37. The trial court in sentencing the Appellants was within the law and thus the sentences were proper and I uphold the same.

38. The upshot is that the appeal on both conviction and sentence is bereft of merit and the same is therefore dismissed.

39. Right of Appeal 14 days.

It is so ordered.

**JUDGMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 6TH NOVEMBER, 2025.
DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 6TH NOVEMBER 2025.**

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NOEL I. ADAGI

JUDGE

In the presence of :

In person..... for Appellant

Ms Agatha for..... Respondent

Milly Grace..... Court Assistant

