Rogony v Republic (Criminal Appeal E005 of 2024)
[2025] KEHC 16884 (KLR) (19 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16884 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL APPEAL E005 OF 2024

SM MOHOCHI, J

NOVEMBER 19, 2025

BETWEEN

NICHOLAS KIPKURUI ROGONY ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal originating from the judgement and thirty (30) year imprisonment sentence of Hon A. Mukenga delivered on 14th December, 2023 in Molo Principal Magistrate's Court SOA Case No E099 of 2022)

JUDGMENT

1. The Appellant on 19th September, 2022 was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8 (3) of the Sexual Offence Act No. 3 of 2006. The Particulars of the charge are that:-

> On the 17th September 2022 at about 1200hrs at [Particulars withheld] Village in Londiani Sub-County within Kericho County, you intentionally and unlawfully caused your penis to penetrate the vagina of JKM a child aged 14 years.

2. The Appellant also faced an alternative charge of Indecent Act with a child contrary to Section 11(1) of the Sexual Offence Act No. 3 of 2006. The Particulars are that:

> On the 17th September 2022 At about 1200hrs at [Particulars withheld] Village in Londiani Sub-County within Kericho County, you intentionally and unlawfully touched the vagina of JKM a child aged 14 years using your penis.

3. The Appellant pleaded not guilty to all the charges and the case went to full trial. The prosecution called four (4) witnesses. At the close of the prosecution's case, the Court found that the Appellant had

a case to answer and put him on his defense under Section 210 of the Criminal Procedure Code. The Appellant gave sworn statement and never called any witness. The Judgement was delivered and the Appellant was convicted on the main charge and sentenced to serve thirty (30) years imprisonment.

4. The Appellant being dissatisfied with the entire Judgement and sentence filed this Appeal seeking that this Court allows his Appeal, quashes the Lower Court's conviction and set-aside the thirty (30) years imprisonment sentence.

5. The Appeal was argued based on the grounds in the Memorandum of Appeal argued in two broad grounds; ground 1,3,4,6,7 are argued together while 2,5 are conjoined as one.

6. With regards to the Grounds of Appeal No. 1,3,4,6 and 7 the Appellant contends that contradictions in the prosecution's witnesses the critical question is always whether the discrepancies are minor and inconsequential or whether they are material so as to vitiate the prosecution case.

7. That in the present case the main contradiction it face is the time of the offence. As per PW1 the complainant the incident happened at 7:00 PM as per her evidences in chief PW2 Version the incident happened at 3:00PM the Judgement of the Court states the incident happened at 1700hrs while the charge sheet stated 1200 hrs. What raises question is evidences came out that the incident happened before the time the claimant state it happened so the incident mention by PW2 is different from the act that gave rise to this case?

8. That PW2 mention seeing a girl PW1 packing mandazi yet PW1 stated clearly that she went to buy. The question that this contradiction raise is, does a purchaser of an item from shop pack the items? the answer is in Negative. The statement of PW2 clearly paint a picture of someone working which the same tallies with the Appellant defenses that PW2 accused him of employing underage hence the reason he was attacked by public.

9. That, further, PW2 never mentions chief, yet the investigating officer mention.

10. PW3 stated that P3 form was filled on 19th September, 2022 two days after the offences yet PW1 states she went to the hospital on the same day of the incident being 17th July, 2022 which clearly contradicts what the police stated on the face of the P3 form. What is indicated in the form by the Police is that the date of reporting the incident is 19th September, 2022 at 2010 hrs. PW3 never mentioned filling the form at Night but him it was during the day.

11. Further that the said document being Exhibit 1 clearly bears two different dates the stamp indicates 19th April, 2022 but date on the documents indicates 19th September, 2022,

12. Reference is made to the case Joseph Maina Mwangi Vs, Republic (2000) KLR the Court state that;

> " in discrepancies must be guided by the wording of section 382 of the Criminal Procedure Code whether such discrepancies are such as to cause prejudice to the appellant or they any trial, there are bound to be discrepancies. An appellate Court in considering those are inconsequential to the conviction and sentence."

13. Further As set out in the following case Joseph Maina Mwangi v. Republic, CR, APP No. 73 of 1993. Kimeu v. Republic (2002) 1 KAR 757 and Willis Ochieng Republic. Cr. App. No. 160 of 2000, this Court expressed itself as follows on the Odero . Republic [2006] CKLR). In John Nuaga Njuki & 4 Others issue is important.

> " In certain criminal cases, particularly those which involve mang witnesses, discrepancies are in many instances inevitable. But what is important is whether the discrepancies are of such

a nature would create a doubt as to the quilt of the accused. If so, then the prosecution would not have discharged the burden squarely on it to prove the case beyond any reasonable doubt. However, where discrepancies in the evidence do not affect an otherwise proved case against the accused, a Court is entitled to overlook those discrepancies and proceed to convict the accused. The discrepancies in the evidence in the matter before us are in our view, of a minor nature considering the facts and circumstances of the case."

14. In the case of Philip Nzaka Watu Vs. Republic (2016) eKLR the Court stated that:

> " The first question in this appeal is whether the prosecution case was riddled with contradictions and inconsistencies of the magnitude that would make the conviction of the appellant unsafe. It cannot be gainsaid that to found a conviction in a criminal case, where the trial Court has to be satisfied of the accused person's guilt beyond reasonable doubt, the prosecution evidence must be cogent, credible and trustworthy. Evidence that is obviously self-contradictory in material particulars or which is a mere amalgam of inconsistent versions of the same event, differing fundamentally from one purported eyewitness to another, cannot give the assurance that a Court needs to be satisfied beyond reasonable doubt."

15. The Appellant submits that the discrepancies submitted above are of the nature that created doubt and vitiated the prosecution case and thus the conviction in which it was based on is unsafe.

16. That the voire dire examination conducted depicted a coached child. That the answer always given by children of tender age whenever asked is I will not go to heaven, I will go to hell or God will not be the present case PW 1 clearly stated i will be arrested leaves a lot to desire. what happens when you lie happy with me" However in her answer.

17. With regards to ground 2.5 the Appellant submits that, PW3 indicated that the hymen and P3 form further confirms to be old injury. The same P3 confirms injuries were 2 days old i.e 48 hours. Definition of old as per oxford dictionary, adjectively means something which has existed for a long time. Blacks Law Dictionary define it as injuries often implies a past injury that has been known to exist for an extended period of time injury that occurred long ago. In the present case the purported old injury is 48 hours old which in reality isn't old while bruises the PW3 confirmed to exist but not old. On this limb he relies entirely on the Judgment of Justice Linnet Ndolo in Criminal case no.155/2011 Dominic Kibet Mwareng vs R.

18. That PW3 while testifying mentions sexual transmitted infection noted however what beg for answers is the gestation period of the signs to be seen. The tests were done 2 days after the incident, which disease takes 2 days to show signs?that this clear shows the disease was in existences and the same tallies with the fact of hymen broke but old injury. That as per PW4 the charges were preferred based on the medical outcome which as stated above its raises questions than answers.

Respondent's Submissions

19. The Respondent submits on ground 1, 2, 5 and 8 that, the evidence adduced in support of the charges against the appellant was cogent, consistent, corroborated and watertight. We submit that the prosecution case was proved beyond reasonable doubt.

20. Reference is made to the case of George Opondo Olunga vs. Republic [2016] eKLR the Court of Appeal held that:

> " The offence of defilement is rooted on three main ingredients being the age of the victim (must be a minor), penetration and the proper identification of the perpetrator. These

ingredients are provided for under section 8(1) of the *sexual Offences Act* No. 3 of 2006 and must each be proven for a conviction to issue."

21. That, the victim herein testified as PW1. It was her testimony that she was 12-year-old. Page 6 line 7 Pexh 2 was an age assessment report which confirmed that she was 12 years old.

22. That this ingredient was therefore proved beyond any reasonable doubt.

23. On Penetration it is submitted that, PW1 testified that she went to buy a donut in a hotel. She found the Appellant there with three other men. The Appellant carried her on his shoulders, took her to his house. He then threatened her with a knife, that if she screamed, then he would cut her with the knife; removed her trouser, biker and pants. Page 6 line 15 to 17.

24. She further testified that the Appellant then ordered her to lie on the bed and inserted his thing for urinating into her thing for urinating. The accused then run away but he was arrested immediately. They went to the police station and she was escorted to the hospital. Page 6 line 18-23.

25. That PW2 owns a business near the hotel where the defilement took place. She heard screams. She went to where the Appellant used to sleep. She found the Appellant had pulled down his trousers. PW1'S pants had also been removed and his penis was inside PWI's vagina. The accused person ran away upon seeing her. She called for help and the Appellant was arrested. Page 13 line 12-18.

26. That PW2, an independent witness and a neighbour to the Appellant witnessed the penetration.

27. That PW3 was the clinical officer who attended to PW1. It was his evidence that he noted visible injuries and bruises on her genital area. He also noted whitish discharge. Page 15 line 3-4therefore that penetration was proved.

28. That, PW1 testified that she only saw the Appellant on the day he defiled her. The Appellant was however arrested immediately at the scene. Despite the Appellant being a stranger to her, the fact that he was arrested immediately then means that there was no chance of there being a mistaken identity. Both the Appellant and PW1 were escorted to the police station.

29. That PW2 was a neighbour to the Appellant. It was her testimony that she found the Appellant defiling PW1. Her testimony therefore was that of recognition. The Appellant was not a stranger to her.

30. Reference is made to the case of Reuben Taabu Anjononi & 2 Others v Republic [1980]eKLR, this Court held: -

> "Recognition of an assailant is more satisfactory, more assuring, and more reliable than Identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other"

31. That Identification of the Appellant was therefore very clear and straightforward.

32. That all the requisite elements for the offence of defilement were proved beyond reasonable doubt. And that the trial Court considered the evidence in support of the charges against the appellant and rightly arrived at a conviction.

33. On ground 2, 4, 6 and 7, it is the Respondent submission that, the prosecution's evidence was water tight and it proved the case beyond reasonable doubt.

34. That PWI gave an account of how the Appellant herein defiled her. PW2 corroborated PW1's testimony.

35. The Respondent submit that if contradictions or inconsistencies were there, then they were not fatal and did not dislodge the prosecution's case.

36. That In Richard Munene v Republic [2018] eKLR, the Court of Appeal stated with regard to contradiction or inconsistency in the evidence of the prosecution witness:

> " Contradictions, discrepancies and inconsistencies in evidence of a witness go to discredit that witness as being unreliable. Where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of the accused. It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial Court that an accused person will be entitled to benefit from it".

37. With regards to the sentence imposed, the Respondent submits that on conviction, the Appellant was sentenced to 30 years imprisonment, Section 8(3) of the *Sexual Offences Act* provides for an imprisonment period for a term of not less than 20 years.

38. The Trial Court, on considering the prosecution's evidence, the defence evidence and the mitigation by Appellant used its discretion to sentence the Appellant to 30 years imprisonment.

39. In Fatuma Hassan Sato vs Republic [2006] eKLR. Makhandia-J. (as he then was) observed: -

> " Sentencing is a matter for the discretion of the trial Court. The discretion must however be exercised judiciously. The trial Court must be guided by evidence and sound legal principles. It must take into account all relevant factors and exclude all extraneous factors....."

40. That the Trial Court in metting out the sentence of thirty years imprisonment considered the state of victim and the veracity of the offence and its impact of the victim.

41. Therefore, the Respondent submits that they proved in trial the key elements necessary for a defilement offence, which the appellant was charged with. The conviction was safe and the sentence meted out was lawful urging this Court to dismiss the appeal for want of merit.

Analysis and Determination.

Duty of the Court

42. As a first Appellate Court, this Court is obliged to revisit and re-evaluate the evidence, asses the same and make its own conclusion bearing in mind the unique position the trial Court was in since it had the advantage of hearing the witnesses and also observing their demeanor during trial.

43. In determining the appeal, considered principles account the laid down in the case of Okeno vs. Republic (1972) EA 32 where the Court of Appeal for Eastern Africa stated that:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be subjected to a fresh and exhaustive examination (Pandya V R 1975) E.A. 336 and to the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusions (Shantilal M. Ruwala V. R [1957] E.A. 570. It is not the junction of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower Court's findings and conclusions; it must make its own

findings and draw its own conclusions. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial Court has had the advantage of hearing and seeing the witnesses, see (Peters V Sunday Post 1978) E.A. 424."

Issues for Determination

44. Upon consideration of the facts of this case, the evidence on record, the Grounds of Appeal and the submissions made by the parties, the following issues are pertinent for consideration:

    a. Whether the offence of defilement was proved to the required threshold;

    b. Whether there was failure to call all crucial witnesses and was it fatal to the prosecution;

    c. Whether there were contradictions to the prosecution's case;

    d. Whether the Alibi defence was unlawfuly disregarded; and,

    e. Whether the sentence was excessive.

45. The offence of defilement in embedded on three ingredients namely; the age of the victim, proof of penetration and the positive identification of the perpetrator which are provided for under Section 8(1) of the *Sexual offences act*.

46. Further, for a conviction to stand the test of time, those three ingredients have to be proven. This was espoused in Opondo Olunga vs Republic [2016] eKLR.

Age

47. The Age of the victim is not contested and has been conceded to on Appeal

48. Section 8 (1) of the *Sexual Offences Act* provides for the offence of defilement and 8 and (2) the penalty thereof where the victim is a child of 11 years or less as follows:

    1. A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

    2. A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

49. Section 8 (3) of the Act provides for the penalty for defilement of a child aged between 12 years and 15 years as follows:

    (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years."

Proof of penetration

50. The prosecution had a duty to proof full or partial penetration by the Appellant and relied on Section 2 of the *Sexual Offences Act* of 2006 which defines penetration as:

    'The partial or complete insertion of the genital organ of a person in the genital organ of another person.'

51. In determining penetration, Courts often rely on the evidence of the victim which is then corroborated by medical evidence. However, regarding reliance on section 124 of the *Evidence Act*, the Court of

Appeal in the case of Stephen Nguli Mulili v Republic [2014] eKLR the Court of Appeal had this to say;

> " As a general rule of evidence embodied in Section 124 of the *Evidence Act*, an accused person shall not be liable to be convicted on the basis of the evidence of the victim unless such evidence is corroborated. The proviso to that section make an exception in sexual offences and provides as follows:
>
> > "Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the Court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the Court is satisfied that the alleged victim is telling the truth."

52. The complainant testified that on the material day, at around 1: 00p.m, she went to fetch firewood with her mother. On their way back, her mother sent her to buy dough nuts at the Appellant's person's hotel. The entered the hotel and found three men inside together with the Appellant's. She made her order and paid the Appellant's. Instead of giving her the doughnuts, the Appellant carried her on his shoulders and took her to his house which was nearby. He threatened to cut her with a knife if she raised any alarm.

53. The Appellant then placed her on a mattress, removed her clothes and inserted his penis into her vagina. She screamed and people came. The accused person quickly wore his trousers and ran away to the maize field. He was however found by members of the public and arrested. He was escorted to the police station at Kedawa,

54. The complainant was taken to the police station by the area chief. Thereafter, she was taken to hospital where she was examined, treated and a P.3 form filled. She stated that she did not know the Appellant before the incident.

55. PW2 was Velma Chepkemoi from Kedawa. She testified that the accused person used to operate a bakery next to the Wines and Spirits shop where she was employed. She told the court that on 17/9/2022, at around 3:00p.m. she saw a young girl packing mandazi at the Appellant's bakery. PW2 knew the young girl well and her mother who is mentally incapacitated. Suddenly, PW2 heard screams from where the Appellant used to sleep. She rushed there and found the Appellant in the act defiling the young girl that she had earlier seen at the bakery.

56. It is then that PW2 raised alarm and members of the public came and found the accused person and the complainant. The accused person ran away.

57. PW3 was Mr. Alfred Chesire, a Clinical Officer at Londiani Sub-County Hospital. He testified that the complainant was brought to the hospital on 19/9/2022 by police officers. She had a history of having been defiled by a person well known to her when she went to buy mandazi. Upon examination, a whitish discharge was noted on her underpants. There were bruises on her genital area. The hymen was broken. She had a sexually transmitted disease. She was put on Anti-retroviral drugs and emergency pregnancy pills. Her age was assessed via an X-ray and estimated at 12 years old.

58. The court finds that the complainant's testimony on penetration has been corroborated by the medical records and expert witness evidence. Penetration has been proved.

Identification of perpetrator.

59. The complainant identified the Appellant which identification was corroborated by PW1 and PW3. It should further be recalled that the accused was apprehended in the act or so soon thereafter.

60. The Court of Appeal in Francis Muchiri Joseph v Republic (2014) eKLR held that:

> " In LESARAU v R, 1988 KLR 783, this Court emphasized that where identification is based on recognition by reason of long acquaintance, there is no better mode of identification than by name".

61. The identification of the Appellant was based on recognition and by name. The above case shows that heavy reliance is based on recognition of a perpetrator. In this case, the Appellant seemed well known to PW1 as PW1 testified of him being a neighbour. The ingredient of identification therefore meets the test of time.

62. The offence took place in broad day light and thus there were no chances of mistaken Identity. Moreover the complainant remained consistent in her examination in chief and cross-examination, she gave a clear account of what transpired before, during and after the incident. The defence never demonstrated the existence of a grudge or any other ulterior motive that would warrant the implication during cross-examination. The Court finds no doubt as to the identity of the appellant in commission of the offence.

63. The accused person in his defence admitted to the presence of PW1 and PW2 in his bakery as well as the circumstances hiving rise to his arrest which corroborates the prosecution's case. It is noteworthy that the Appellant never attacked the prosecution's case in defence and never fortified his theory of being accused of employing child labor or the exact reason why he would maintain that he was unfairly accused. The Appellant was in the company of two other persons who would have testified in his aid but he failed to call them as witnesses.

Whether there were contradictions fatal to the prosecution's case

64. The prosecution witnesses gave evidence contradicting each other and fatally as the contradictions touch on the key ingredients of the offence of defilement.

65. The Appellant submits that, the critical question is always whether the discrepancies are minor and inconsequential or whether they are material so as to vitiate the prosecution case.

66. That in the present case the main contradiction it faces is the time of the offence. As per PW1 the complainant the incident happened at 7:00 PM as per her evidences in chief PW2 Version the incident happened at 3:00PM the Judgement of the court states the incident happened at 1700hrs while the charge sheet stated 1200 hrs. What raises question is PW1 evidences came out that the incident happened before the time the claimant state it happened so the incident mention by PW2 is different from the act that gave rise to this case?

67. PW2 mention seeing a girl pw1 packing mandazi yet PW1 stated clearly that she went to buy. That the question that this contradiction raise is does a purchaser of an item from shop pack the items? The answer is in Negative. The statement of PW1 a clearly paint a picture of someone working which the same tallies with the Appellant defenses that PW3 accused him of employing underage hence the reason he was attacked by public.

68. Further PW2 never mentioned chief yet the investigating officer mention the chief.

69. That PW3 stated that P3 form was filled on 19th September, 2022 two days after the offences yet PW1 states she went to the hospital on the same day of the incident being 17th July, 2022 which clearly contradicts what the police stated on the face of the P3 form. What is indicated in the form by the Police is that the date of reporting the incident is 19th September, 2022 at 2010 hrs. PW3 never mentioned filling the form at Night but him it was during the day. Further that the P3 form bears two different dates

70. This Court has a duty to examine the evidence and determine whether there were contradictions in the evidence tendered, and if there were any, were the contradictions so material that the Court ought to have rejected the evidence? Were the contradictions so material that they may persuade this Court on them?

71. It is this Court's opinion that the contradiction as to when the Complainant ultimately visited the hospital for examination and discrepancy in time was not so material to warrant its rejection. In the midst of the contradiction the consistency was that the victims and her mother went to the Appellant's bakery and while the mother was waiting for her daughter outside, alarm was raised, the Appellant fled but was apprehended by the public, he was found in the Act by PW3. The contradictions are immaterial to the extent of proof of penetration was demonstrated.

72. There was contradiction as to the dates but the chronology of events the medical examinations and the testimony of the witnesses align. Defilement was also established. If there was contradiction it was not material and it did not point to untruthfulness from the victim and as such do not affect the substance of the case.

73. It should be recalled that the Appellant was arraigned before court on the 19th September 2022 and the offence had occurred two days earlier.

74. The court having found the Appellant had a case to answer was put on his defense and was required to prove to court that he was not the perpetrator. His defence comprised of an admission of PW1 and PW2 visiting his bakery on the material date while he was preparing mandazi. That PW1 and PW2 came to deliver firewood. He continued attending to his clients. PW3 who operated a wines and spirit shop next to his business came and accused him falsely of employing under-age girls. Shortly thereafter, he went outside where he found a crowd of people who accused him of employing children. The crowd knocked him down and he lost consciousness. He came to while at the police station where he was charged with the offence.

75. The Appellant never tendered evidence why he was falsely accused and what would make PW1 and PW2 implicate him.

76. The court in its evaluation reached the inescapable conclusion that the prosecution had proved their case beyond reasonable doubt, this was a case of in flagrante delicto the Appellant was caught in the act and has not demonstrated glaring evidence exonerating him from the criminal act complained of.

77. This Court finds that the Expert evidence was uncontroverted and corroborated PW1's evidence sufficient to warrant a conviction and sentence.

78. As earlier alluded the appellant actively participated in the trial proceedings and he never cross examined on any aspects of contradictions and discrepancies.

79. As to whether the conviction and sentence was safe and sound? The trite law with regards contradictions and discrepancies of evidence is that, inconsistencies unless satisfactorily explained, would usually but not necessarily result in the evidence of a witness being rejected. (See Uganda v

Rutaro {1976} HCB; Uganda v George W Yiga {1979} HCB 217). In trying to shade light as to why there might be minor discrepancies between two witnesses testifying on the same case, the High Court of Kenya in Philip Nzaka Watu v Republic (2016) CR APP 29 OF 2015, had this to say:

> "The first question in this appeal is whether the prosecution case was riddled with contradictions and inconsistencies of the magnitude that would make the conviction of the appellant unsafe. It cannot be gainsaid that to found a conviction in a criminal case, where the trial court has to be satisfied of the accused person's guilt beyond reasonable doubt, the prosecution evidence must be cogent, credible and trustworthy. Evidence that is obviously self-contradictory in material particulars or which is a mere amalgam of inconsistent versions of the same event, differing fundamentally from one purported eyewitness to another, cannot give the assurance that a court needs to be satisfied beyond reasonable doubt.
>
> However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomena exactly the same way. Indeed, as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question."

80. Again the court, in Joseph Maina Mwangi v Republic Criminal Appeal No. 73 of 1993, held, inter alia, that: -

> "In any trial there are bound to be discrepancies. An appellate court in considering those discrepancies, must be guided by the wording of section 382 of the criminal procedure code viz whether such discrepancies are so fundamental as to cause prejudice to the appellant or they are inconsequential to the conviction and sentences"

81. This Court is bound by the Court of Appeal decision in Erick Onyango Odeng' v Republic [2014] eKLR citing with approval the Uganda Court of Appeal case of Twehangane Alfred v Uganda Criminal Appeal No 139 of 2001, [2003] UGCA, 6 in which it was held as follows:

> "With regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution case."

82. The role of this Appellate Court under the circumstances is to assume the role of the trial court, reconcile these contradictory facts and then determine whether they were prejudicial to the appellant and therefore fatal to the prosecution case or were inconsequential to the appellant's conviction and sentence. See the case of Josiah Afuna Angulu v Republic, Nakuru CR Appeal No 277 of 2006 (UR).

83. It is this Court's finding that the contradictions and discrepancies on time the crime occurred on the 17th September 2022 or the purpose which the victim came to the bakery/restaurant were not of such a magnitude to displace the prosecution's case or cast reasonable doubt in his favor.

84. This Court finds that the trial court prosecution evidence was cogent, coherent, credible, corroborated and truthful, informing the conviction and sentence.

85. While the Appellant challenged his sentence, very little, if none, was offered in support, this Court however note that the trial court judiciously exercised its powers in sentencing and that the imposed sentence is not excessive to warrant any interference by the court.

86. It is the Court's finding, that the conviction and sentencing of the Appellant by the trial court was safe and sound, thus disallow and dismiss the appeal for lack of merit.

87. From the foregoing, I must now reach to the conclusion that the instant appeal lacks merit. The conviction and sentence is hereby confirmed.

88. The Sentence shall run from 17th September, 2022.

89. The Appellant has 14 days right of Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 19TH DAY OF NOVEMBER, 2025

MOHOCHI S.M.

JUDGE