



REPUBLIC OF KENYA



KENYA LAW
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**Njane v Republic (Criminal Appeal E017 of 2023)
[2025] KEHC 18018 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 18018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E017 OF 2023
A MSHILA, J
NOVEMBER 28, 2025**

BETWEEN

PAUL MUIRURI NJANE APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Facts

1. The Appeal arises from the judgment delivered on 31st March, 2023 by the Hon. L Nyabando RM in Kikuyu SPMC SO No. 30 of 2020. The Appellant had been charged with the offence of Defilement c/ s 8(1)(4) of the *Sexual Offences Act* No.3 of 2006; and an alternative charge of Committing an Indecent Act with a child contrary to Section 11(1) of the same *Act*.
2. On the 23/08/2020 at [particulars withheld] in Kabete Sub-County of Kiambu County within Central Region the Appellant being a male person intentionally caused his genital organs to penetrate that of LN a child aged 16 years.
3. The Appellant was convicted on the main charge and sentenced to Fifteen (15) years imprisonment.
4. The Appellant being aggrieved with the decision preferred this appeal both on conviction and sentence and listed eleven (11) grounds of appeal summarized *inter alia*;
 - a. The Trial Magistrate erred in convicting the appellant in the absence of direct evidence linking him to the offence of defilement. And heavily relied on circumstantial evidence. There were inconsistencies and contradictions in the prosecutions' case.
 - b. The Appellant was not properly and positively identified



- c. The Trial Magistrate relied on uncorroborated medical and forensic evidence. And failed to consider the absence of DNA. No *spermatozoa* was found on the Complainant.
 - d. The defence testimony and evidence was not considered
 - e. The Trial Magistrate misinterpreted and misapplied the law; The sentence imposed was manifestly harsh and excessive in the circumstances.
5. At the hearing of the appeal the Appellant was represented by Miss Muthami while Mr. Gacharia was present for the State; the parties were directed to canvass the appeal by filing and exchanging written submissions.

Issues for Determination

6. Upon hearing and reading the submissions of both sides this court has framed only one issue for consideration and determination;
 - i. Whether this is a suitable case to order for a retrial;

Analysis

7. Upon perusal of the court record this Court has noted that on 20/1/2021 the matter was allocated to Court 3 and listed for directions on the 23/02/2022 as the Trial Magistrate was on transfer; On the 23/ 02/2022 the court record reflects that the new Trial Magistrate did not give any directions and proceeded to fully hearing the case by taking the evidence of PW6; there was therefore non-compliance with Section 200(3) of the [Criminal Procedure Code](#) which is a mandatory requirement when a new Magistrate takes over a part heard criminal case.
8. The applicable law is found at Section 200(3) which reads as follows;
 - “(3) Where a succeeding Magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.”
9. It is the duty of the trial court to have informed the accused of this right and the court must then record his choice in the proceedings; The record reflects that the Appellant was not accorded an opportunity to make a choice to start de-novo or to recall witnesses or to continue with the matter from where it had reached. This may have been a misconception of the rules of procedure on the part of the trial court; nonetheless this court is satisfied that the correct procedure was not followed and the Appellant was thus not accorded a fair trial;
10. Whether to allow a retrial is always dependent on the circumstances of the case; in this instance this court has taken into consideration the defects at the trial in that the Appellant was not availed the opportunity to make a choice before the part heard matter proceeded for further hearing; it has also been noted that this mistake was entirely of the trial courts making in its failure to give proper guidance on procedure.
11. Other factors that need to be considered are whether a retrial is in the best interest of justice and whether it will cause any prejudice to the Appellant; whether the evidence is sufficient to support a conviction; lastly the availability of the prosecution witnesses who testified at the trial.



12. This Court is of the view that this was a suitable case in which this court can order for a retrial; the Appellant would not suffer any prejudice were the court to order for a retrial as he had been sentenced on the 31/03/2023 to fifteen (15) years imprisonment; by the time of the hearing of this appeal the Appellant had been incarcerated for two (2) years which is not deemed to be long period of time considering that the term imposed was for fifteen (15) years; this court has noted that indeed one of the grounds of the Appellant's appeal was that he was not accorded a fair trial; a retrial gives him a second chance to prove his innocence; which therefore puts to rest the issue of prejudice that may have been envisaged.
13. This Court is satisfied that it would be in the best interest of justice to order for a re-trial as there are valid and sufficient reasons to support a re-trial; and the material prosecution witnesses are readily available to testify.

Findings & Determination

14. For the afore-going reasons this court finds that this is a suitable case to order for a re-trial.
15. The conviction entered against the Appellant is hereby quashed and the sentence of fifteen (15) years imprisonment is hereby set aside; but the Appellant shall not be set at liberty and shall be remanded at Nairobi Remand pending retrial.
16. There shall be a retrial before a subordinate court with competent jurisdiction.
17. This Court directs that the file be placed before the Chief Magistrate Kikuyu Law Courts for Directions.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF NOVEMBER, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant.

Nyamesa – for the Respondent.

Njane h/b for Miss Muthami -For the Appellant.

Appellant – present @ Kitengela Prison.

Language - Kiswahili.

