



**Mwangi v Republic (Criminal Appeal E013 of 2025)
[2025] KEHC 18090 (KLR) (Crim) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E013 OF 2025
KW KIARIE, J
DECEMBER 3, 2025**

BETWEEN

ISAAC MUREITHI MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E090 of 2022 of the Principal Magistrate's Court at Engineer by Hon. E. Wanjala, Principal Magistrate)

JUDGMENT

1. Isaac Mureithi Mwangi, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* No.3 of 2006.
2. The particulars of the offence were that in May 2022, at [Particulars Withheld], Kipipiri Sub-County within Nyandarua County, intentionally and unlawfully caused his penis to penetrate the vagina of GWM, a child aged seventeen years.
3. The appellant was sentenced to fifteen years' imprisonment and has appealed against both his conviction and sentence. He raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact by convicting the appellant, but failed to note that the age of the complainant was not conclusively proved.
 - b. The learned trial magistrate erred in law and fact by convicting the appellant, but failed to note that either identification or recognition did not prove the identification of the assailant.
 - c. The learned trial magistrate erred in law and fact by convicting the appellant, but failed to note that the penetration of the complainant was not conclusively proved.



4. The state opposed the appeal through M/s Odera Vena, learned counsel, on the following grounds that the offence was proved to the required standards.
5. This is the first appellate court. As expected, I have analyzed 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. I have perused the record and established that the learned trial magistrate erred in allowing PC Andrew Wekesa (PW4) to adduce evidence of confession. This was in breach of section 25A (1) of the Evidence Act, which provides as follows:

A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court before a judge, a magistrate or before a police officer (other than the investigating officer), being an officer not below the rank of Chief Inspector of Police, and a third party of the person's choice.

The second error I have noted is that the learned trial magistrate allowed the appellant to be cross-examined over another case. Section 57(1) of the Evidence Act provides:

In criminal proceedings the fact that the accused person has committed or been convicted of or charged with any offence other than that with which he is then charged, or is of bad character, is inadmissible unless—

- aa) such evidence is otherwise admissible as evidence of a fact in issue or is directly relevant to a fact in issue; or
 - a. the proof that he has committed or been convicted of such other offence is admissible under section 14 or section 15 of this Act to show that he is guilty of the offence with which he is then charged; or
 - b. he has personally or by his advocate asked questions of a witness for the prosecution with a view to establishing his own character, or has given evidence of his own good character; or
 - c. the nature or conduct of the defence is such as to involve imputations on the character of the complainant or of a witness for the prosecution; or
 - d. he has given evidence against any other person charged with the same offence:

Provided that the court may, in its discretion, direct that specific evidence on the ground of the exception referred to in paragraph (c) of this subsection

shall not be led if, in the opinion of the court, the prejudicial effect of such evidence upon the person accused will so outweigh the damage done by

imputations on the character of the complainant or of any witness for the prosecution as to prevent a fair trial.



7. The appellant was prejudiced, and this was a derogation from Article 50 of *the Constitution*, which provides for a fair trial. This, therefore, amounted to a mistrial. The Black's Law Dictionary 10th Edition defines mistrial:

“a trial that the judge brings to an end, without determination on merit, because of procedural error of serious misconduct occurring during the proceedings.”

8. The conviction is quashed and the sentence set aside. The appellant is to be taken to the Engineer Law Courts within 14 days of this judgment, for retrial before another magistrate other than Hon. E. Wanjala, Principal Magistrate.

DELIVERED AND SIGNED AT NYANDARUA, THIS 3RD DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

