



REPUBLIC OF KENYA



**PKM v Republic (Criminal Appeal E039 of 2025)
[2025] KEHC 18437 (KLR) (Crim) (16 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E039 OF 2025
KW KIARIE, J
DECEMBER 16, 2025**

BETWEEN

PKM APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Cases No. 5 of 2020 of the Chief Magistrate's Court at Nyabururu by Hon. S.N. Mwangi– Senior Resident Magistrate)

JUDGMENT

1. Paul Kagiri Maina, the appellant herein, was convicted of the offence of incest contrary to section 20 (1) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence were that on diverse dates between 1st December 2019 and January 2020 at Leshau location in Nyandarua County, being a male person, caused his penis to penetrate the vagina of M.W.M., a female child aged fifteen years, who was, to his knowledge, his aunt.
3. The appellant was sentenced to life imprisonment. He has appealed against both conviction and sentence. He raised the grounds of appeal as follows:
 - a. The learned trial magistrate erred in law by convicting and sentencing the appellant, yet failed to find that the prosecution failed to prove the essential element of penetration beyond a reasonable doubt.
 - b. The learned trial magistrate erred in law by convicting and sentencing the appellant, failing to note that the medical evidence adduced did not provide corroboration of the charge.



- c. The learned trial magistrate erred in law by convicting the appellant, yet failed to appreciate that the prosecution's case was marred with contradictions and inconsistencies.
 - d. The learned trial magistrate erred in law by failing to adequately consider that the relationship between the appellant and the victim was not proved.
 - e. That life sentence imposed upon the appellant is the maximum sentence prescribed by section 20(1), yet the same section is discretionary; hence, the sentence was imposed and failed to consider the unique facts and circumstances of the offence and the mitigation by the appellant. Such mandatory application of a sentence should be declared unconstitutional.
4. The state opposed the appeal through M/s Odero Vena, learned counsel. It was contended that the prosecution had proven its case to the required standards.
 5. This court is an appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses testify. Therefore, I will follow the well-known case of *Okeno vs Republic* [1972] E. A 32 to guide my decision-making process.
 6. Section 20 (1) of the *Sexual Offences Act* provides:

Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.
 7. Based on the provisions of this section, the elements of incest are as follows:
 - a) The accused must be male;
 - b) The victim must be female;
 - c) She must be his daughter, granddaughter, sister, mother, niece, aunt, or grandmother;
 - d) He must be aware of the relationship; and
 - e) Penetration must occur.
 8. The complainant said she was the appellant's aunt. This was not disputed. A copy of her birth certificate shows she was born on 20 November 2004. As of 1st December 2019, she was fifteen years old. Her age was, therefore, proven.
 9. M.W.M. (PW1), the complainant, wavered in her evidence as to how the sexual intercourse between her and the appellant occurred. At one point, she indicated it was consensual, but at another said that the appellant forced her. After evaluating the evidence in its entirety, I conclude that it was consensual. However, the complainant lacked the capacity to give consent.
 10. Samuel Njora Njuguna denied any involvement in the offence.



11. The proviso to section 124 of the *Evidence Act* states:

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.

12. The DNA report with respect to the complainant's baby, who was born following the incident, confirmed that the appellant was the father of the child. This, therefore, corroborated the complainant's evidence that he defiled her.

13. The Appellant's conviction was founded on sound evidence.

14. The appellant contended that the sentence that was meted out to him was harsh. Section 20 (1) of the *Sexual Offences Act* provides as follows:

Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.

15. The sentence under the proviso to section 20 (1) is not mandatory. I therefore set aside the trial court's sentence and substitute it with a sentence of 20 years' imprisonment.

16. Since the appellant remained in custody pending the determination of this case, his sentence will run from the 16th day of January 2020, when he was arrested. His appeal has succeeded only on the sentence.

DELIVERED AND SIGNED AT NYANDARUA, THIS 16TH DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

