



REPUBLIC OF KENYA



KENYA LAW
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**Waithera v Republic (Criminal Appeal E028 of 2025)
[2025] KEHC 18346 (KLR) (Crim) (15 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E028 OF 2025
KW KIARIE, J
DECEMBER 15, 2025**

BETWEEN

WILLIAM KIMANI WAITHERA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E020 of 2024 of the Senior Principal Magistrate's Court at Engineer by Hon. E. Wanjala –Principal Magistrate)

JUDGMENT

1. William Kimani Waithera, the appellant herein, was convicted of the offence of rape contrary to section 3(1) as read with section 3 (3) of the [Sexual Offences Act](#) No.3 of 2006.
2. The particulars of the offence were that on the 4th day of August 2024 at [Particulars Withheld] sub-location in North Kinangop sub-county within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of M.W.W. without her consent.
3. The appellant was sentenced to serve ten years' imprisonment. He was aggrieved and has appealed against both conviction and sentence. He, however, did not raise any grounds of appeal.
4. The state conceded the appeal through Odera Vena. She argued that the identification of the appellant was unreliable and did not meet the required standard.
5. This is a first appellate court. As expected, I have analysed 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. The ingredients of the offence of rape are set out in section 3 of the *Sexual Offences Act*, which states as follows:

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
 - (c) the consent is obtained by force or by means of threats or intimidation of any kind.
7. M.W.W. (PW1), the complainant, in her evidence, stated that after alighting at Ndinda on her way to Mawingu, she waited for a matatu in vain. She therefore opted to use a boda-boda. The appellant approached while having another lady as a passenger. He offered to ferry both of them, for the lady was going to Mawingu as well. She boarded the motorcycle.
8. While on the way, the appellant offered to drop the other lady first before dropping her at her destination. He, however, used a route unknown to her, and they ended in a bushy area. He threatened to kill her if she screamed. He raped her. She later identified him at Ndinda, from where he was arrested.
9. Dr Karanja (PW6) is a medical officer at Engineer County Hospital. He testified on behalf of Dr Owuor, who examined the complainant on the 5th day of August 2024. On examination, the hymen was found broken, and he concluded there was evidence of penetration.
10. William Kimani Waithera, the appellant, stated that he is a matatu conductor and denies any involvement in the crime. He asserted that his arrest occurred while he was serving passengers.
11. The appellant and the complainant had no prior acquaintance before the incident. The appellant was not arrested promptly, and the complainant did not provide a detailed description of the attacker. Although she noted that the appellant was not wearing a helmet, she did not clarify what led her to identify him later. Basing the conviction on unverified identification evidence was unreliable. Consequently, the conviction was unsafe.
12. The conviction is quashed, and the sentence is set aside. The appellant is released unless he is lawfully detained for other reasons.

DELIVERED AND SIGNED AT NYANDARUA, THIS 15TH DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

