



**JMG v Republic (Criminal Appeal 60 of 2023)  
[2026] KEHC 301 (KLR) (Crim) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 301 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 60 OF 2023  
KW KIARIE, J  
JANUARY 22, 2026**

**BETWEEN**

**JMG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S. O. Case No. 31 of 2020 of Chief Magistrate's Court at Nyabururu by Hon. S.N. Mwangi– Senior Resident Magistrate)*

**JUDGMENT**

1. JMG, 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 the 16<sup>th</sup> day of March 2020, at the P.B.K. village of Nyandarua West sub-county in Nyandarua County, being a male person, caused his penis to penetrate the vagina of M.W., a female child aged seven years, who was, to his knowledge, his niece.
3. The appellant was sentenced to life imprisonment. He has appealed against both conviction and sentence. He raised the following grounds of appeal:
  - a. The trial magistrate erred in law and fact by failing to find that the medical evidence just proved penetration but did not ascertain the real perpetrator. DNA from samples of fluid found on the complainant's vagina could be used to give real results of whoever committed the heinous act.
  - b. The trial magistrate erred in both law and fact by relying solely on identification, considering that the complainant is a young child aged 7 years who can be influenced by anyone with malicious intent to identify the accused. The incident occurred in darkness and at the police



station, where the minor stated she could not identify the perpetrator. Trusting physical identification, especially when a close relative aims to confirm it, is often 100% reliable because the complainant knows the accused well. Therefore, other elements should also be considered to ensure justice.

- c. The trial magistrate erred in law and fact by not considering that the child was found in the bush in the dark at midnight while the appellant was asleep at home, being a relative of the complainant, and that it was within the domain of the whole family for this child to come to the accused's place, play, and then return home in the evening. Hence, it was not possible for the appellant to commit this heinous act, especially considering that it could directly link him.
  - d. The trial magistrate erred in law and fact by not considering that the child could have been defiled by any person on her way home, without the accused person noticing.
  - e. The trial magistrate erred in law and fact by finding that the prosecution had not proved the charge of defilement beyond a reasonable doubt.
  - f. The trial magistrate erred in law and fact in finding a conviction that was against the weight of evidence.
  - g. The trial magistrate made a legal and factual error by sentencing without noting that the complainant's mother previously testified about a different story concerning the farm fence the appellant damaged at home, which contributed to a grudge that affected this framing.
  - h. The sentence is too harsh.
4. The state did not file any grounds of opposition.
  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. The elements of incest as outlined in this section 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) There must be penetration.
8. B.M.N. (PW4) is the complainant's mother. Her evidence is that the appellant was her first cousin. The complainant is therefore his niece. The complainant (PW1) and her brother (PW2) testified that the appellant was their uncle. The relationship was established, and the appellant is male.
  9. The complainant is a female who was at the time of the offence aged seven years. She testified that the appellant asked her and two others to escort him. On the way, he sent D.N. (PW2) and M.NM. (PW3) to go and call W. He carried her to some bushes where he defiled her.
  10. D.N. (PW2) and M.NM. (PW3) confirmed that during their escort of the appellant, he asked them to call W, who refused to come along. When they returned, the appellant and the complainant, whom they had left together, were no longer there.
  11. The evidence of D.N. (PW2) B.MN. (PW4) and that of P.M.N. (PW5) was that the complainant was traced by a search party in the forest.
  12. On 17th March 2020, Purity Wanja Mwanu, a clinical officer at Nyahururu County Referral Hospital, examined the complainant. Her clothes were blood-stained and soiled. The labia minora and majora exhibited fresh bruising, and the hymen had recently been broken.
  13. JMG, the appellant, contended that he was falsely implicated after he failed to pay Kshs.50,000.00.
  14. 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.
  15. The medical evidence supports the complainant's assertion that she was indeed defiled. Testimonies from D.N. (PW2) and M.NM. (PW3) corroborated the complainant's account regarding the identity of the perpetrator. There is no record to substantiate the appellant's claim that he was falsely implicated.
  16. I find that the prosecution proved to the necessary standards that the appellant defiled the complainant.
  17. The proviso to section 20 of the *Sexual Offences Act* states:

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.
  18. The appeal has no merit, and the same is dismissed.

**DELIVERED AND SIGNED AT NYANDARUA, THIS 22<sup>ND</sup> DAY OF JANUARY 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**

