



REPUBLIC OF KENYA



**Wanyonyi v Republic (Criminal Appeal E011 of 2022)
[2026] KEHC 229 (KLR) (19 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E011 OF 2022
RN NYAKUNDI, J
JANUARY 19, 2026**

BETWEEN

SIFUNA PETER WANYONYI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No. 3 of 2006. The brief facts are on the 7th day of May 2016, at Soy Sub Location in Likuyani Sub County within Kakamega County, unlawfully and intentionally caused his genital organ (penis) to penetrate into the genital organ (vagina) of PM, a child aged 8 years old. He was sentenced to serve life imprisonment.
2. He faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*, in which it was alleged that he unlawfully and intentionally caused his penis to come into contact with the vagina of PM.

Decision

3. From the record this Court being presided over by the session Judge Achode J on 9th September 2020 pronounced itself as follows:
 - a. Having considered the evidence in its entirety and taking the age of the minor into account, I understand, as did the trial Court, that the minor was referring to her genitals and those of the Appellant when she used the euphemism 'dudu'. I note that the Appellant's defence was a mere denial which did nothing to create any doubt, let alone a reasonable one in the prosecution case.
 - b. Having therefore anxiously considered the grounds of appeal, the evidence on record and the submissions from both sides, I am satisfied that the trial Court reached the right conclusion



on the evidence before it. I am of the considered view that the evidence against the Appellant was sufficient and the Appellant was properly convicted.

- c. On the sentence, I have considered the Appellant's mitigation and the fact that he had no record of prior convictions but in light of the age of the complainant and the brutish manner in which the offence was perpetrated, I find that the sentence meted against him was proper. For the foregoing reasons I find that the appeal is lacking in merit and is consequently dismissed in its entirety. It is so ordered.
4. This cause of action hinges on jurisdiction of this Court in *Benson Makori Makworo v Nairobi Metropolitan Services & 2 others* [2022] KEHC 26937 (KLR), the Court stated:

“I will, however, briefly reiterate what the Court of Appeal stated in Nakuru Civil Appeal No. 119 of 2017 *Public Service Commission & 2 Others vs. Eric Cheruiyot & 16 Others* consolidated with Civil Appeal No. 139 of 2017 *County Government of Embu & Another vs. Eric Cheruiyot & 15 Others* (unreported) in a decision rendered on 8th February, 2022 on the doctrine of jurisdiction in general as follows: -

Jurisdiction is everything, it is what gives a Court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines Court jurisdiction as follows:

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the Court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular Court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior Court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the Court or tribunal has been given power to determine conclusively whether the facts exist. Where a Court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given...”

5. Similarly, the Court pronounced itself in the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989):

“Jurisdiction is everything. Without it a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a Court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

6. It is also the position taken by the Supreme Court in the case of *Kenya Hotels properties limited* determining a comparable challenge like this Court observed as follows:

Article 165(3) of *the Constitution* confers on this Court with very wide jurisdiction to deal with any matter that falls within its jurisdiction. That jurisdiction is not exhaustive given that Article 165(3)(e) states that the Court can have any other jurisdiction, original



or appellate, conferred on it by legislation. In terms of Article 165(3)(d)(ii), the Court has jurisdiction to determine the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, the Constitution. Article 23(1) also states that the Court has jurisdiction to hear and determine applications for redress of denial, violation or infringement of or threat to a right or fundamental freedom in the Bill of Rights. This jurisdiction is to be exercised in accordance with article 165 of the Constitution. Article 23(3) of the Constitution undoubtedly confirms the extent of the width of the jurisdiction of this Court to grant appropriate relief.”

7. The record demonstrates that there is already a final judgement on the merits presided over and pronounced by Achode J as she was sitting at the High Court. The proper forum to address any grievances would be the Court of Appeal. The application by dint of jurisdiction is wanting and is therefore dismissed under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 19TH DAY OF JANUARY 2026.

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R. NYAKUNDI

JUDGE

