



**Opondo v Republic (Criminal Appeal E147 of 2025)
[2026] KEHC 1182 (KLR) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E147 OF 2025
DR KAVEDZA, J
FEBRUARY 10, 2026**

BETWEEN

CHRISTOPHER OMBELE OPONDO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 7th October 2025 by Hon. A. Mwangi (C.M) at Kibera Chief Magistrate's Court Sexual Offences Case No. E135 of 2023 Republic vs Christopher Ombele Opondo)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of rape contrary to section 3(1) (a)(c) as read with 3(3) of the *Sexual Offences Act* No. 3 of 2006. He was sentenced to serve ten (10) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He contended that the trial court failed to consider his defence. The appellant urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. PW1 JMN testified that she is a Form Four student. She told the court that she first met the appellant on 25th December 2023 at Rainbow Clinic, Nairobi West, having visited the facility with her father for treatment of lower abdominal pain on urination.



5. On the material date, the appellant, acting as the doctor, examined her privately. She provided a urine sample and a pregnancy test was negative. He diagnosed an infection, administered an injection to her right buttock, prescribed oral medication, and obtained her father's consent for three consecutive daily injections.
6. On 26th December 2023 at approximately 3:00 pm, PW1 returned alone for the second injection. The appellant injected her left buttock. He then directed her not to dress, examined her vagina, noted whitish discharge, and wiped it with tissue paper. As she prepared to dress, the appellant approached closely, unzipped his trousers, and said “just a little, just a little.” Despite her active resistance, pushing him away and scratching the back of his hand, the appellant he overpowered her. He pushed her onto the examination bed, and forcibly inserted his penis into her vagina. Non-consensual penile penetration continued for approximately ten minutes. He thereafter wiped his penis with an unidentified white substance.
7. PW1 dressed, went home, cleaned herself, confided first in her brother then her father, and reported the incident. Police from Akila Station accompanied her and her father to the clinic, where she positively identified the appellant. He was arrested. She was examined at Nairobi Women Hospital, received post-exposure prophylaxis and other treatment, and medical documents were issued. Police collected samples from the clinic bin.
8. In cross-examination, PW1 confirmed that she had no prior acquaintance with the appellant, that her father selected the clinic knowing him, that vaginal examination occurred on both visits and that she was fully undressed below the waist during the second visit.
9. PW2 JN, father of PW1 JMN, confirmed that he accompanied his daughter to Rainbow Clinic on 25th December 2023 for treatment of urinary tract infection symptoms. He knew the appellant as a pastor associated with his church, which occupies the same building as the clinic. The appellant examined and treated PW1 privately, administering an injection and prescribing medication. PW2 paid KSh 3,700 by M-Pesa which he produced the M-Pesa statement as an exhibit.
10. On 26 December 2023, PW1 complained of weakness from the medication and returned alone for the second injection. Upon her return home, she entered her bedroom. Shortly afterwards, she summoned her 25-year-old brother. The brother emerged agitated and informed PW2 that the doctor had raped PW1.
11. PW2 directed PW1 and her brother to report at Nairobi West Police Station, promising to follow. The matter was recorded and referred to Akila Police Station. PW2 joined them there, and together with police officers they proceeded to Rainbow Clinic, where PW1 positively identified the appellant. He was arrested on the spot. They then proceeded to Nairobi Women’s Hospital, where PW1 was examined and treated.
12. PW2 further confirmed, by letter dated 5th April 2024 from the Kenya Medical Practitioners and Dentists Council (produced as an exhibit), that the appellant was not a registered medical practitioner.
13. PW4 John Njuguna, a clinician at Nairobi Women Hospital, testified on behalf of his former colleague, Solomon Mwendwa, who was not available to testify but his evidence was admitted. He stated that on 26th December 2023 at 20:33 hours, Solomon Mwendwa examined PW1 JMN following her report of sexual assault by a doctor at approximately 15:00 hours that day at the doctor’s clinic.
14. On examination, no physical injuries were observed on the body. The external genitalia appeared normal. The hymen was torn but healed. Vaginal discharge was present. No sexually transmitted disease, urinary tract infection, or vaginal infection was detected.



15. PW1 was commenced on post-exposure prophylaxis (PEP). Solomon Mwendwa completed and signed the GVRC forms for both patient and appellant, the P3 form, the PRC form, and the laboratory request form.
16. In cross-examination, PW4 confirmed he could not determine from the examination whether rape had occurred. The appellant's GVRC form recorded no penile bruises. No spermatozoa were detected in the findings.
17. PW3 PC Onesmus Muiye, attached to Akila Police Station and the arresting officer, testified that on 26 December 2023 he received instructions from his superior concerning a reported rape in Nairobi West. He met PW1 and her father, who escorted him to Rainbow Clinic. PW1 positively identified the appellant as the perpetrator. PC Muiye arrested the appellant, booked him at Akila Station, and escorted both complainant and appellant to Nairobi Women's Hospital for examination. He issued PW1 with a P3 form and transferred the appellant to the investigating officer. He was accompanied by IP Kariuki during the arrest and had no prior knowledge of either party.
18. PW5 PC Edna Kiture the investigating officer, testified that on 27th December 2023 she interrogated the appellant in custody (transferred from Nairobi West Patrol Base) on allegations of rape. She recorded witness statements, visited the clinic, charged the appellant, and identified him in the dock.
19. In his sworn defence, the appellant testified that he is a pastor at the Church of Christ in Kenya. At all material times, his residence, the church, and Rainbow Clinic were housed in the same building. On 25th December 2023, a man and his daughter arrived at the clinic, which he informed them was closed. The girl left, and he remained chatting with the man before the man departed.
20. On 26th December 2023, police officers arrived at the building, directed him to open the clinic, and conducted a search. He alleged they ordered him to undress, touched and struck his private parts while questioning him about the complainant, handcuffed him, seized his inner wear, and transported him to Nairobi West Police Post, then to Akila Police Station, and subsequently to Nairobi Women's Hospital. There, his urine and blood samples were taken, and a full-body examination conducted. In the police vehicle, officers allegedly gave him medication and a receipt (produced in court as defence exhibits), which he did not consume. He remained in custody at Akila until arraigned on 28th December 2023.
21. He denied committing the offence, stating he knew the complainant's father as a member of the adjacent mother church, though he preached at the Kibera branch. He asserted no prior differences with the complainant. He further claimed an ongoing dispute between the church and clinic management, previously handled by advocates, Lang'ata DCI, and the Milimani ELC Court (ELC 831 of 2014). He produced defence exhibits: letters dated 19th September 2014 (B.J. Sawe Advocate), 5th August 2014 (Brenda J. Nagogi), 9th March 2018 (New Life Christian Church), and the ELC judgment. He explained his roles as temporary caretaker, national treasurer, and clinic receptionist/maintenance person since 1998, while the clinic was registered with a resident doctor, pharmacist, and clinician.
22. He denied seeing the complainant on the material date and confirmed she was neither a church member nor clinic patient.
23. DW2, operator of a neighbouring fruits shop, testified that on 25th December 2023 (9–10 am), he observed a man and a girl (aged approximately 16–18) inquire about the clinic via the watchman. The appellant informed them the doctor was absent, and they left. On 26th December, the same pair returned with others, the appellant opened the clinic upon police request. They remained inside for



- about 15 minutes before he was handcuffed and taken away. DW2 stated the clinic remained closed until police intervention and suggested any defilement could not have occurred there.
24. DW3, the appellant's wife, corroborated that on 25th December a church member (the complainant's father) visited her husband. They spoke with him briefly before rejoining the family gathering. On 26th December, police and the same faithful took him away after the guard summoned him.
 25. In cross-examination, the appellant confirmed his pastoral and clinic roles. DW2 noted he attended patients at reception. DW3 stated the clinic was owned by Dr. Silas Okoth and operated by others, with her husband as receptionist, in a busy area with multiple businesses open.
 26. The trial court found him guilty of the offence charged and convicted him accordingly.
 27. I have considered the grounds of appeal and the submissions by parties and I find that the main issues for consideration are whether the prosecution proved its case beyond reasonable doubt.
 28. The main ingredients of the offence of rape created in section 3 (1) of the Sexual Offences Act include intentional and unlawful penetration of the genital organ of one person by another, coupled with the absence of consent in the case of *Republic v Oyier* [1985] KLR 353 the Court of Appeal held that;
 1. The lack of consent is an essential element of the crime of rape. The mens rea in rape is primarily an intention and not a state of mind. The mental element is to have intercourse without consent or not caring whether the woman consented or not.
 2. To prove the mental element required in rape, the prosecution had to prove that the complainant physically resisted or, if she did not, that her understanding and knowledge were such that she was not in a position to decide whether to consent or resist.
 3. Where a woman yields through fear of death, or through duress, it is rape and it is no excuse that the woman consented first, if the offence was afterwards committed by force or against her will; nor is it any excuse that she consented after the fact."
 29. Bearing in mind the relevant provisions of the *Sexual Offences Act*, 2006, including section 124 which provides that no corroboration of the victim's evidence shall be necessary for conviction in sexual offences, and that the court may convict on the single evidence of the complainant if it is satisfied that such evidence is truthful and reliable, I now analyse the evidence on record to determine whether the prosecution proved beyond reasonable doubt the essential ingredients of the offence of rape against the appellant.
 30. On the issue of penetration, PW1 JMN gave a clear, detailed and consistent account. She testified that on 26 December 2023 at Rainbow Clinic, after receiving her second injection, the appellant directed her not to dress, examined her vagina, wiped it, then approached her, unzipped his trousers, and said "just a little, just a little." Despite her resistance he overpowered her, pushed her onto the examination bed, and forcibly inserted his penis into her vagina for approximately ten minutes. Her evidence remained unshaken under cross-examination.
 31. The trial magistrate found PW1 to be a young adult who was consistent in her evidence even under rigorous cross-examination. She struck the court as an honest and credible witness. There was no evidence of any differences, ill-will, or bad blood between her and the appellant. Accordingly, there was no apparent motive or reason for her to fabricate a false accusation against him.
 32. PW1's testimony on penetration was further supported by the medical evidence from Nairobi Women's Hospital (PW4), which recorded a torn but healed hymen and vaginal discharge, though no spermatozoa or fresh injuries were noted. While the absence of spermatozoa and acute trauma does



not disprove penetration, the clinical findings, viewed together with PW1's credible and consistent narrative, are consistent with the occurrence of sexual intercourse.

33. On the issue of lack of consent, the evidence is unequivocal. PW1 actively resisted, verbally refused, and physically fought back. She was alone in the examination room with the appellant, who occupied a position of authority as her treating clinician. Her vulnerability and fear negated any possibility of consent.
34. Regarding identification, PW1 first encountered the appellant on 25th December 2023 and clearly observed him during the sexual assault on 26th December 2023. She immediately and positively identified him to her father, brother, and police at the clinic, resulting in his prompt arrest. She reaffirmed the identification in court. PW2, PW3, and PW5 corroborated the on-the-spot identification. The identification was reliable, with no basis for mistaken identity.
35. The appellant's defence that the clinic was closed, he did not see PW1 on the material date, and the arrest stemmed from police misconduct was considered but found unconvincing. His references to church-clinic disputes and prior roles did not raise reasonable doubt when weighed against the prosecution's coherent evidence.
36. In light of the foregoing, and mindful of section 124 of the *Sexual Offences Act*, I am satisfied that PW1's truthful and reliable testimony, duly corroborated where material, established beyond reasonable doubt the essential elements of rape: intentional unlawful penetration of PW1's vagina by the appellant's penis without her consent. The appellant is accordingly convicted as charged.
37. On sentence, the appellant was sentenced to ten (10) years' imprisonment. In doing so, the trial court considered all relevant factors, including the pre-sentence report, the appellant's mitigation, and the fact that he was a first offender. The sentence imposed was therefore lawful and proportionate to the gravity of the offence. I find no justification to interfere with the trial court's exercise of discretion in imposing the said sentence.
38. Accordingly, I find that the appeal lacks merit and is hereby dismissed in its entirety. The conviction and sentence are accordingly upheld.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 10TH DAY OF FEBRUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

