



REPUBLIC OF KENYA



KENYA LAW
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**Omusugu v Republic (Criminal Appeal 96 of 2023)
[2026] KEHC 2014 (KLR) (20 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL APPEAL 96 OF 2023
H NAMISI, J
FEBRUARY 20, 2026**

BETWEEN

AMOS OMUNYIN OMUSUGU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal arising conviction and sentence of 20 years imprisonment
in Criminal Case No E002 of 2022 by Chief Magistrate's Court at Thika
before Hon. D. Milimu, SRM dated and delivered on 1 December 2022)*

JUDGMENT

1. The Appellant has appealed against the conviction and sentence meted out by the Chief Magistrate's Court at Thika in Criminal Case No. E002 of 2022. The Appellant was arraigned on 10 January 2022 and charged with the primary offence of defilement, contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* (No. 3 of 2006). The particulars of the main charge alleged that on diverse dates between 5 January 2022 and February 2022, at Migetha area in Juja Sub-County within Kiambu County, the Appellant intentionally caused his penis to penetrate the vagina of Q.N.M., a child aged 15 years. In the alternative, the Appellant faced a charge of committing an indecent act with a child, contrary to section 11(1) of the *Sexual Offences Act*, grounded on the allegation that he intentionally and unlawfully touched the breasts and vagina of the said minor with his penis.
2. The Appellant entered a plea of not guilty to both counts, prompting the matter to proceed to a full trial. The prosecution's case was anchored on the testimonies of 5 witnesses. PW1, the minor, testified to the circumstances of her disappearance from her home following a disagreement with her mother, her encounter with the Appellant, and the subsequent acts of penetration. PW2, the mother of the complainant, testified regarding her daughter's disappearance and the subsequent report made to the authorities. PW3, a Clinical Officer, adduced medical evidence based on the examination of the complainant, which was recorded in a P3 form. PW4 and PW5 were the Investigating Officers who



testified to the arrest of the Appellant, the recovery of the minor, and the production of a photocopy of the minor's Birth Certificate.

3. The Appellant was placed on his defence, and recorded his sworn testimony. The Appellant, who was unrepresented throughout the trial, offered a defence of fabrication, alleging that the investigating officer harboured a grudge against him and sought to have him terminate his employment.
4. On 3 November 2022, the trial court delivered its judgment, finding that the prosecution had proved the critical ingredients of the offence of defilement beyond a reasonable doubt. The trial court rejected the Appellant's defence as a mere fabrication that failed to cast doubt on the prosecution's case. Consequently, the Appellant was convicted of the main charge. On 1 December 2022, following the consideration of a pre-sentence report, the trial court sentenced the Appellant to serve 20 years of imprisonment, noting that this was the mandatory minimum sentence prescribed by law.
5. Aggrieved by both the conviction and the sentence, the Appellant lodged the present appeal.

The Appellant's Submissions

6. The Appellant filed an Amended Petition of Appeal and written submissions advancing a multi-pronged challenge to the trial court's decision, traversing constitutional, procedural, and evidentiary domains. The Appellant asserts that his non-derogable right to a fair trial was egregiously violated because he was tried without the benefit of legal counsel. He argues that the trial court failed to inform him of his right to legal representation, and crucially, his right to have an Advocate assigned to him at the State's expense pursuant to Article 50(2)(h) of *the Constitution* and section 43 of the *Legal Aid Act*. The Appellant contends that as an unrepresented layperson facing a charge carrying a mandatory 20-year sentence, he suffered substantial injustice.
7. Second, the Appellant raises a fundamental procedural objection regarding the transition of trial magistrates. He argues that the succeeding magistrate, Hon. D. Milimu, failed to comply with the mandatory provisions of Section 200(3) of the Criminal Procedure Code. Specifically, he was not informed of his right to demand that the witnesses who testified before the predecessor magistrate be re-summoned and reheard. The Appellant contends that this omission occasioned material prejudice, rendering the trial incurably defective.
8. Third, the Appellant challenges the evaluation of the evidence, pointing out glaring anomalies in the trial court's judgment. He highlights that the trial Magistrate inexplicably relied on the purported testimony of a village elder—a person who never testified in the proceedings—demonstrating a failure to objectively and dispassionately evaluate the evidence on record.
9. Fourth, the Appellant attacks the admissibility and probative value of the evidence used to establish the age of the complainant and the act of penetration. He argues that the admission of an uncertified photocopy of a Birth Certificate violated the exclusionary rule under Article 50(4) of *the Constitution* and the best evidence rule under the *Evidence Act*. Furthermore, he contends that the medical evidence (the P3 form) was inconsistent with the particulars of the charge, as it indicated "NONE" under the weapon used, and the clinical officer conceded that a broken hymen could result from causes other than defilement.
10. Finally, the Appellant challenges the constitutionality and proportionality of the 20-year sentence. Relying on evolving jurisprudence concerning mandatory minimum sentences, he argues that the sentence is harsh, oppressive, and deprives the judicial officer of the necessary discretion to individualize punishment.



The Respondent's Submissions

11. The Respondent vigorously opposed the appeal. The Respondent submitted that the prosecution discharged its burden of proving the case beyond a reasonable doubt and that the trial court's findings were sound in law and fact.
12. On the issue of the Appellant's unrepresented status, the Respondent maintained that the trial court afforded the Appellant an adequate opportunity to cross-examine witnesses and articulate his defence. The Respondent argued that the prosecution's evidence was overwhelming, and the absence of legal representation did not precipitate a miscarriage of justice.
13. Regarding the substantive proof of the offence, the Respondent submitted that the age of the complainant was conclusively established. Even if the documentary evidence were contested, the oral testimony of the complainant's mother (PW2) corroborated the minor's age, satisfying the legal threshold established in cases such as *Mwalango Chichoro Mwanjembe v Republic eKLR*. On the element of penetration, the Respondent relied on the direct, eyewitness testimony of the victim, which was medically corroborated by the clinical findings of a broken hymen and vaginal bruises, satisfying the statutory definition of penetration under section 2 of the *Sexual Offences Act*.
14. Addressing the legality of the sentence, the Respondent asserted that the 20-year imprisonment term is the statutory minimum prescribed under section 8(3) of the *Sexual Offences Act* for the defilement of a child aged between 12 and 15 years. Relying on recent Supreme Court jurisprudence, specifically *Republic v Joshua Gichuki Mwangi* (Petition No. E018 of 2023), the Respondent argued that mandatory minimum sentences under the *Sexual Offences Act* remain constitutional and lawful, and appellate courts lack the jurisdiction to interfere with such statutory minimums. Paradoxically, while defending the trial court's sentence as the statutory minimum, the Respondent concluded its submissions by urging this Court to enhance the sentence to life imprisonment.

Analysis & Determination

15. This Court exercises its appellate jurisdiction pursuant to section 347 of the Criminal Procedure Code. The duty of a first appellate court is well-settled. The Court is obligated to independently re-evaluate, re-assess, and re-analyze the entire record of the proceedings from the trial court and draw its own independent conclusions. This principle was articulated in the seminal case of *Okeno v Republic EA 32* and reaffirmed in *Felix Kinyanya Marako v Republic* (High Court at Migori CA No. 102 of 2014). In discharging this mandate, the appellate court must constantly remind itself that it did not have the advantage of seeing or hearing the witnesses testify and must make due allowance for that limitation.
16. Having carefully reviewed the trial record, the judgment of the lower court, and the rival submissions of the parties, this appeal turns on the resolution of the following determinative issues:
 - a. Whether the trial court's failure to inform the unrepresented Appellant of his right to state-funded legal representation occasioned a substantial injustice in violation of Article 50(2)(h) of *the Constitution*.
 - b. Whether the succeeding trial magistrate's failure to inform the Appellant of his right to re-summon witnesses under section 200(3) of the Criminal Procedure Code vitiated the trial and caused material prejudice.
 - c. Whether the trial court's evaluation of the evidence was fatally compromised by the reliance on extraneous matters not on the record.



- d. Whether the admission of an uncertified photocopy of a Birth Certificate violated the *Evidence Act*, and whether the age of the complainant was otherwise proved beyond a reasonable doubt.
- e. Whether the prosecution established the element of penetration to the required standard in law.
- f. Whether the mandatory minimum sentence of 20 years imprisonment is constitutional, lawful, and appropriate.

The Right to Legal Representation and Legal Aid

17. The foundation of the Appellant's challenge lies in the assertion that his trial was constitutionally infirm due to the trial court's failure to advise him of his right to legal representation, particularly his right to state-funded counsel.
18. The right to a fair trial is a non-derogable right under Article 25(c) of *the Constitution*. Central to this right is the guarantee under Article 50(2)(g) that every accused person has the right to choose, and be represented by, an advocate, and to be informed of this right promptly. More pertinently, Article 50(2)(h) guarantees the right to have an Advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.
19. The constitutional imperative of Article 50(2)(h) is operationalized by section 43(1) of the *Legal Aid Act* (No. 6 of 2016), which explicitly imposes a duty upon the presiding judicial officer:
A court before which an unrepresented accused person is presented shall—
 - (a) promptly inform the accused of his or her right to legal representation;
 - (b) if substantial injustice is likely to result, promptly inform the accused of the right to have an advocate assigned to him or her; and
 - (c) inform the service to provide legal aid to the accused person.
20. Historically, under the repealed Constitution, the right to state-funded legal representation was severely circumscribed and practically non-existent outside of capital offences. In *David Njoroge Macharia v Republic*, the appellate courts recognized the necessity of legal aid in capital offences where the penalty was the loss of life. However, the promulgation of the 2010 Constitution ushered in a paradigm shift, aligning Kenyan law with international standards such as Article 14 of the International Covenant on Civil and Political Rights (ICCPR). The jurisprudence evolved rapidly; in *Thomas Alugha Ndegwa v Republic* [2016] eKLR, the Court extended the necessity of free legal assistance to offences attracting life imprisonment. The Supreme Court in *Republic v Karisa Chengo & 2 Others* [2017] eKLR further clarified that the right covers both criminal and civil trials, pivoting entirely on the threshold of whether substantial injustice would otherwise result.
21. The specific application of this right to sexual offences has been robustly addressed by the Court. In *Sheria Mtaani Na Shadrack Wambui v Office of the Chief Justice & Another* [2021] eKLR, the Court affirmed that persons charged with sexual offences are absolutely eligible for legal representation at the State's expense, given the gravity of the potential sentences and the complexity of the evidentiary burdens involved. Furthermore, in *John Oyange Ogombe v Republic* [2023] eKLR, the Court quashed a conviction for defilement precisely because the trial court failed to inform the unrepresented appellant of his right to legal representation under Article 50(2)(g) and (h) of *the Constitution*, ruling that this failure rendered the proceedings unconstitutional and a nullity.



22. In the instant case, the Appellant was charged with an offence that carries a severe, mandatory minimum sentence of 20 years imprisonment. The trial record reveals that the Appellant, a layman, was thrust into an adversarial arena against trained prosecutors and expert witnesses. A perusal of the proceedings of 6 April 2022, when the hearing commenced, demonstrates that the trial Magistrate failed to apprise the Appellant of his right to counsel, let alone his right to apply for state-funded legal aid. The cross-examination conducted by the Appellant was predictably deficient; he failed to adequately challenge the medical expert on critical forensic details and failed to probe the chain of custody or the evidentiary gaps in the prosecution's case.
23. The failure to warn an accused person of their right to state-funded counsel when facing a mandatory 20-year sentence is not a mere procedural oversight; it is a fundamental breach of a non-derogable constitutional right. The disparity in arms created a scenario where substantial injustice was not just likely, but inevitable. The trial court's omission offends Article 50(2)(h) of *the Constitution* and section 43 of the *Legal Aid Act*, thereby stripping the trial of its constitutional validity.

Non-Compliance with Section 200 of the Criminal Procedure Code

24. The second procedural flaw raised by the Appellant is equally fatal to the conviction. The record confirms that the trial was conducted piecemeal by two different magistrates. Hon. V. Kachuodho (SRM) recorded the evidence of PW1 (the minor), PW2 (the mother), and PW3 (the clinical officer). The matter was subsequently taken over by Hon. D. Milimu (RM), who recorded the evidence of the investigating officers (PW4 and PW5), received the defence case, and wrote the judgment.
25. Section 200 of the Criminal Procedure Code regulates the succession of magistrates during a trial. Section 200(3) is unequivocal in its command:

Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.
26. The rationale for this statutory protection is deeply embedded in the principles of adversarial justice. A trial Magistrate is not merely a stenographer; they are the ultimate arbiters of fact. Their assessment of the veracity of a witness depends substantially on their observation of the witness's demeanour, tone, and comportment under the pressure of cross-examination. When a succeeding Magistrate inherits a cold, written transcript, they are deprived of this crucial observational advantage. Consequently, the law mandates that the accused must be informed of the right to have those witnesses recalled so the new Magistrate can observe them firsthand.
27. The trial record in this matter is conspicuously silent on compliance with section 200(3). There is no indication that Hon. D. Milimu informed the Appellant of his right to recall the witnesses who testified before Hon. V. Kachuodho. In the landmark decision of *Rebecca Mwikali Nabutola v Republic* [2012] eKLR, the Court held that it is the accused person who must be informed of this right, and their answer must be recorded. The failure to do so vitiates the trial.
28. The gravity of this omission is amplified by the nature of the witnesses involved. The succeeding Magistrate, who ultimately convicted the Appellant, never saw or heard the complainant (PW1) testify. She never observed the clinical officer (PW3) being cross-examined on the medical findings. The conviction was grounded on the paper records of the most critical prosecution witnesses.



29. Under section 200(4) of the Criminal Procedure Code, the High Court is empowered to set aside a conviction if it is of the opinion that the accused was materially prejudiced by being convicted upon evidence not wholly recorded by the convicting magistrate. The jurisprudence on material prejudice is settled. In *Erick Simiren v Republic* [2015] eKLR, a conviction for defilement was quashed where the trial Magistrate failed to inform the accused of the right to recall the primary complainants, with the court finding this failure materially prejudiced the right to a fair trial under Article 50(2)(k) of *the Constitution*. Similarly, in *John Bell Kenengeni v Republic* [2015] eKLR, the Court held that non-compliance with section 200(3) CPC is fatal to the prosecution's case and renders the trial a nullity.
30. I am firmly of the opinion that the Appellant herein was materially prejudiced. The convicting Magistrate's failure to apprise the unrepresented Appellant of his right to recall the primary accuser and the medical expert fundamentally undermined the integrity of the fact-finding process. This omission independently warrants the quashing of the conviction.

Extraneous Considerations

31. The Appellant drew the Court's attention to a deeply concerning anomaly in the trial court's judgment. At page 5 of the judgment (lines 1-2), the trial magistrate stated: "I see no reason as to why they would all want to lie against the accused person including the village elder and I therefore see no reason to doubt the witnesses".
32. A meticulous perusal of the entire trial record reveals that no individual holding the title of village elder ever testified in these proceedings, nor was a village elder ever mentioned in the testimonies of PW1, PW2, PW3, PW4, or PW5.
33. A judicial officer must base their findings of fact exclusively on the evidence adduced and admitted during the trial. The introduction of an entirely fictitious or extraneous witness into the judgment points to an alarming lack of care. Such an inclusion strongly suggests that the trial magistrate either imported facts from a different case or failed to independently and subjectively evaluate the evidence before her.
34. The jurisprudence on such judicial errors is clear. In the context of criminal appeals, procedural and substantive errors that affect the fairness of the trial or demonstrate that the trial court did not properly evaluate the evidence occasion a miscarriage of justice. When a magistrate's evaluation of credibility relies on a non-existent witness, the appellate court cannot trust that the Magistrate applied her mind to the actual evidence adduced by the parties. This error further shatters the safety of the conviction.

Admissibility of the Uncertified Photocopy and Proof of Age

35. The Appellant contends that the prosecution failed to prove the age of the minor because the trial court illegally admitted a photocopy of the Birth Certificate, contrary to the *Evidence Act*. The record confirms that PW5, an investigating officer, produced a copy of the minor's Birth Certificate as Exhibit 1.
36. The legal framework governing documentary evidence is stringent. Section 64 of the *Evidence Act* dictates that documents must be proved by primary evidence. A Birth Certificate, being a record of the acts of an official body, is a public document under section 79 of the *Evidence Act*. When a party seeks to rely on secondary evidence of a public document, section 68(1)(c), read concurrently with sections 80 and 81 of the *Evidence Act*, mandates that only a certified copy of the document is admissible.
37. The rationale for requiring certification of public documents is to guard against forgery and ensure the authenticity of records that the court is asked to accept as prima facie truth. An uncertified photocopy



holds no probative value in a criminal trial unless specific, rigorous foundations regarding the loss or destruction of the original are laid, which was not done in this case. The trial court, therefore, misdirected itself in law by admitting the uncertified photocopy of the Birth Certificate.

38. However, the exclusion of the Birth Certificate does not automatically prove fatal to the prosecution's burden of establishing the victim's age. The law recognizes multiple avenues for proving age in sexual offences. In *Mwalango Chichoro Mwanjembe v Republic* [2016] eKLR, the Court of Appeal settled the law, holding that age can be proved by documentary evidence (such as a birth certificate or baptismal card), medical evidence, or the oral evidence of the parents, guardians, or the child herself if sufficiently intelligent.
39. In the present case, the complainant (PW1) testified that she was 15 years old. Crucially, her biological mother (PW2) testified under oath, corroborating the minor's age and providing the date of birth. The oral testimony of a biological parent regarding the age of their child is highly probative and admissible evidence. Therefore, even when the improperly admitted uncertified photocopy is expunged from the record, the oral testimonies of PW1 and PW2 are sufficient to establish beyond a reasonable doubt that the complainant was a child between the ages of 12 and 15 years at the time the offence was committed. The Appellant's ground of appeal on the failure to prove age must, therefore, fail.

Proof of Penetration and the Medical Evidence

40. The Appellant challenged the finding of penetration, heavily relying on the fact that the P3 form filled by PW3 (the clinical officer) indicated "NONE" in the section for the type of weapon used, and that PW3 conceded during cross-examination that a hymen could be broken by means other than sexual intercourse.
41. The legal threshold for penetration is defined under section 2 of the *Sexual Offences Act* as "the partial or complete insertion of the genital organs of a person into the genital organs of another person". Kenyan jurisprudence has long recognized that in sexual offences, the presence of spermatozoa is not a mandatory requirement to prove penetration. As articulated in *Mark Oiruri Mose v Republic* (2013) eKLR, even superficial or partial penetration satisfies the ingredient of the offence, as the attacker may not fully complete the sexual act. Similarly, in *George Hezron Mwakio v Republic* [2010] eKLR, the Court reiterated that evidence of forced partial penetration is sufficient.
42. The Appellant's argument regarding the omission of a weapon on the P3 form is legally and factually untenable. The male sexual organ is not classified as a weapon in the standard forensic evaluation of a defilement case where no external, inanimate object was used to inflict supplementary injury.
43. The primary evidence of penetration was the oral, eyewitness testimony of the victim (PW1). She gave a coherent and specific account that the Appellant removed her clothes, wore a condom, and inserted his penis into her vagina, causing her pain. This direct evidence was corroborated by the medical findings of PW3, who noted a broken hymen, a yellowish-creamish discharge, and fresh bruises on the distal aspect of the inferior vagina. While it is a medical fact that a hymen can be ruptured by strenuous physical exercise, the combination of a broken hymen with fresh vaginal bruises and a corroborative oral account from the victim establishes a powerful nexus indicating sexual trauma.
44. Had the trial been conducted procedurally fairly, the substantive evidence on record was more than sufficient to establish the ingredients of defilement beyond a reasonable doubt.



The Constitutionality and Lawfulness of the Mandatory Minimum Sentence

45. The final substantive issue concerns the twenty-year sentence imposed by the trial court. The Appellant submitted that the sentence was harsh, oppressive, and disproportionate. Relying on the evolving jurisprudence spurred by the Supreme Court's decision in *Francis Karioko Muruatetu & Another v Republic KESC 2 (KLR)*, the Appellant argued that mandatory minimum sentences fetter judicial discretion, violate the separation of powers, and amount to inhumane treatment. The Appellant cited Court of Appeal decisions, such as *Julius Kitsao Manyeso v Republic KECA 827* and *Dismas Wafula Kilwake v Republic eKLR*, which had previously held that mandatory sentences under the [Sexual Offences Act](#) were unconstitutional.
46. Conversely, the Respondent argued that the sentence was the precise statutory minimum dictated by Section 8(3) of the [Sexual Offences Act](#). The Respondent relied on recent Supreme Court jurisprudence to argue that appellate courts lack the jurisdiction to interfere with such statutory minimums.
47. Given the extensive submissions by both parties on this point, and the historical confusion in the lower courts regarding the application of the Muruatetu principles, it is necessary for this Court to delineate the current, binding state of the law on mandatory minimum sentences in sexual offences.
48. The Supreme Court in *Muruatetu I* declared the mandatory death sentence for murder unconstitutional. Following this, several High Court and Court of Appeal benches extrapolated that reasoning to strike down various mandatory minimum sentences across different statutes, including the [Sexual Offences Act](#). The Court of Appeal in Malindi, in the *Manyeso* case, held that an indeterminate life sentence for defilement denied convicts the opportunity for mitigation, and substituted the statutory life sentence with a fixed term of 40 years.
49. However, the Supreme Court has decisively intervened to correct this jurisprudential drift, entirely overturning the appellate decisions relied upon by the Appellant. The Supreme Court's clarificatory directives in *Muruatetu II* explicitly stated that the original judgment was strictly confined to the mandatory death sentence for murder under section 204 of the Penal Code and did not automatically invalidate mandatory or minimum sentences in other statutes.
50. This position was firmly entrenched in two highly significant, recent Supreme Court judgments. In *Republic v Joshua Gichuki Mwangi (SC Petition No. E018 of 2023)*, delivered on 12 July 2024, the Supreme Court allowed an appeal by the Director of Public Prosecutions and explicitly set aside a Court of Appeal judgment that had declared mandatory minimum sentences under the [Sexual Offences Act](#) unconstitutional. The Supreme Court held that while sentencing is an exercise of judicial discretion, it is Parliament—not the Judiciary—that possesses the constitutional mandate to define crimes and set the parameters of sentencing. The Court noted that statutory minimums for sexual offences reflect the legislature's valid intent to reflect the gravity of sexual violence, deter offenders, and protect vulnerable groups, thereby curing the historical leniency derived from prejudicial myths and stereotypes.
51. Furthermore, in *Republic v Julius Kitsao Manyeso (SC Petition No. E013 of 2024)*, the Supreme Court overturned the specific Court of Appeal decision that the Appellant relied upon in his submissions. The Supreme Court ruled that the Court of Appeal had acted ultra vires and violated the doctrine of separation of powers by usurping legislative authority to define sentences. The Supreme Court reinstated the original life sentence, emphasizing that courts cannot substitute mandatory minimum or maximum sentences with alternative sentences merely because they perceive them as severe.



52. Applying this binding, apex-level jurisprudence to the instant case, the legal position is unambiguous: the mandatory minimum sentences prescribed by the *Sexual Offences Act* are valid, lawful, and constitutional. Section 8(3) of the Act mandates that a person convicted of defiling a child aged between twelve and fifteen years is liable to imprisonment for a term of not less than twenty years. Having found the complainant to be 15 years old, the trial Magistrate had no legal authority to impose a sentence lesser than 20 years. The imposition of the twenty-year term was not an act of judicial oppression, but rather strict compliance with valid legislation.
53. Simultaneously, the Respondent's invitation to this Court to enhance the sentence from 20 years to life imprisonment is misplaced. Under section 8(2) of the Act, a mandatory life sentence is applicable strictly where the victim is aged eleven years or younger. For a victim aged between twelve and fifteen, twenty years is the exact minimum prescribed, and it is the appropriate baseline sentence absent highly aggravating circumstances not present here. Therefore, had the conviction been safe, the sentence of twenty years would have been entirely lawful and beyond appellate reproach.
54. In the premise, this Court issues the following orders:
- i. The appeal against conviction is allowed. The conviction of the Appellant for the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* is hereby quashed.
 - ii. The sentence of 20 years imprisonment imposed by the trial court is set aside.
 - iii. In the interest of justice, and pursuant to section 200(4) of the Criminal Procedure Code, a retrial is hereby ordered. The file shall be remitted to the Chief Magistrate's Court at Thika for the retrial to be conducted de novo before a Magistrate of competent jurisdiction, other than Hon. V. Kachuodho and Hon. D. Milimu.
 - iv. The Appellant shall be remanded in custody pending his production before the trial court for the taking of plea and directions on bail and bond in the new trial.

DATED AND DELIVERED AT THIKA THIS 20 DAY OF FEBRUARY 2026.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Appellant: Present at Kamiti Maximum Prison

For the Respondent: Ms Torosi

Court Assistant: Lucy Mwangi

