

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL E029 OF 2022

JAMES NDUNG'U WANJIRU.....

.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDET

(Being an appeal against the conviction and sentence by Hon. Mwanamkuu Sudi (PM) dated 14th July, 2022 in the Principal Magistrate's court at Kandara criminal case no. E032 of 2022)

JUDGEMENT

- 1.** The appellant, *James Ndung'u Wanjiru* was charged and convicted on his own plea of guilty with the offence of defilement contrary to *Section 8 (1)* as read with *Section 8 (2)* of the *Sexual Offences Act No. 3 of 2006*.
- 2.** The particulars alleged that on 12th July 2022, at Gitare village in Mung'aria location, Kandara Sub-County in

Murang'a County, the appellant intentionally caused his penis to penetrate the anus of *I.W.M*, a child aged 10 years.

- 3.** Upon conviction, the appellant was sentenced to life imprisonment. He was aggrieved by his conviction and sentence hence this appeal.
- 4.** In his Petition of Appeal dated 27th July 2022 filed on his behalf by *Ms. Mbiyu Kamau & Company Advocates*, the appellant relied on six (6) grounds of appeal which can be condensed into four main grounds as follows:
 - i) That the learned trial magistrate erred in law and fact in failing to record the language in which the proceedings were conducted and in conducting the proceedings in a language the appellant did not understand.
 - ii) That the learned trial magistrate erred in law and fact in conducting the trial in both English and Kiswahili languages without verifying which of the two languages the appellant understood.
 - iii) That the learned trial magistrate erred in law and fact in convicting

and sentencing the appellant on a plea which was not unequivocal.

iv) That the learned trial magistrate erred in law and fact in failing

to consider the appellants mitigation when passing sentence.

5. The appeal was prosecuted by way of written submissions. The court record shows that although the appellant's submissions are dated 24th February 2025, they were filed six months later on 22nd August 2025.

Learned prosecution counsel *Ms. Muriu*, filed her submissions on behalf of the respondent on 9th April 2025.

6. Briefly, in his submissions, the appellant contended that his plea of guilty was equivocal as the proceedings of the trial court were conducted in the English language and there was no indication on record that the language was interpreted or translated to the Swahili language which he understood; that the learned trial magistrate erred in failing to conduct the proceedings in the language which the appellant understood. To support this submission, the appellant relied on *Article 50(2) M* of the constitution which provides that every accused

person has a right to a fair trial, which includes the right to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial.

7. In addition, the appellant relied on the authority of **Jason Akhonya Makokha V Republic [2014] KECA 23 (KLR)** for the proposition that failure of a trial court to use the language an accused person understood was fatal to the prosecution case.
8. The appellant also contended that the record did not indicate that he was cautioned of the consequences of pleading guilty to a charge of defilement. Reliance was placed on the authority of **Wakianda V Republic [2016] KECA 181** in which the Court of Appeal held that cautioning an accused person of consequences of pleading guilty was particularly crucial in the case of unrepresented persons who without legal guidance can be left at sea in the maze of the often-intimidating judicial process. It was the appellant's view that his appeal was merited and should be allowed as prayed.

- 9.** The appeal is contested by the respondent. In her submissions, *Ms Muriu*, learned prosecution counsel asserted that it was clear from the trial court's record that the charges were read to the appellant in a language he understood since he responded to the charges in the Swahili language. Counsel further submitted that the record showed at page 1 that the appellant was cautioned on the severity of the offence he faced and its maximum sentence. She argued that the plea entered by the trial court was proper and unequivocal and the appeal should be dismissed for want of merit.
- 10.** This being a first appeal to this court and being aware of the duty of a first appellate court, I have carefully scrutinized the record of the trial court with a view to determining whether the appellant's plea of guilty as recorded by the trial court was equivocal as alleged by the appellant or unequivocal as maintained by the respondent.
- 11.** It is trite that an appellate court can only interfere with an accused person's plea of guilty if it was not unequivocal. The Court of Appeal in ***Alexander Likoye Malika V Republic***

[2015] eKLR buttressed this position when it expressed itself as follows: -

“A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous, or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also, where upon admitted facts the appellant could not in law have been convicted of the offence charged.”

- 12.** The law governing the taking and recording of plea is set out in *Section 207* of the *Criminal Procedure Code* which was simplified and elaborated in **Adan V Republic (1973) EA 445 at 446** as follows:

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then

explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilty, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded."

- 13.** The appellants main grievance in this appeal is that his plea of guilty was not unequivocal as the learned trial magistrate failed to indicate on record the language in which the

proceedings were conducted as well as the language he understood.

- 14.** I have perused both the original record of the trial court and the typed copy of the proceedings recorded by the trial court on 14th July 2022 when the appellant took his plea. Having done so, I note that although the typed proceedings do not indicate the language that was used by the trial court on the date the appellant took his plea, the original record of the court shows that the language used by the court was English interpreted into the Swahili language which the appellant has in his submissions admitted that it was a language he understood.

I say so because the original record of the trial court clearly shows that there was an interpreter present in court and the language used was English/Kiswahili.

- 15.** Besides, the record shows that when the charge and its elements were read over to the appellant, he responded by stating in Kiswahili - “Ni Ukweli”.

This leaves no room for doubt that although the proceedings of the court were conducted and recorded in the English language, the language was interpreted to the appellant in the Kiswahili language which he understood and that is why he was able to respond to the charges and the facts stated by the state in support of the charges. If the appellant did not understand the proceedings, he would not have offered the type of mitigation he did before he was sentenced.

- 16.** The facts stated by the prosecution in support of the offence charged disclosed the offence of defilement and linked the appellant to commission of the offence. The appellant's response though recorded by the trial court in the English language shows that the appellant acknowledged that the facts put to him were correct meaning that they were factually true.

In my opinion, the fact that the appellant's response was recorded in the English language does not of itself mean that the facts were not interpreted to him in the Swahili language like the rest of the proceedings.

17. In view of the foregoing, I am satisfied that the learned trial magistrate complied with the law regarding the taking and recording of a plea of guilty and I thus agree with the respondent that the appellant's plea of guilty was proper and unequivocal.

18. Further, the appellant's claim that he was not cautioned about the consequences of pleading guilty to the offence charged yet he was unrepresented is baseless since the court record clearly shows that before he took his plea, the trial court warned the appellant that the offence carried a sentence of life imprisonment.

Despite this warning, the appellant proceeded to plead guilty to the offence. He cannot now turn around and claim that the learned trial magistrate did not warn him of the consequences of pleading guilty to the offence.

19. For all the above reasons, I am satisfied that the appellant was correctly convicted on his own plea of guilty. And as the sentence imposed by the trial court was lawful given that the sentence of life imprisonment was the mandatory sentence

prescribed by the law, it is my finding that this appeal lacks merit and it is hereby dismissed in its entirety.

DATED, SIGNED and DELIVERED at **MURANGA** this 19th day of February 2026.

HON. C.W. GITHUA
JUDGE

In the Presence of:

The Appellant

Mr. Nganga holding brief for *Mr. Mbiyu Kamau* for the Appellant.

No appearance for the respondent

Ms Susan Waiganjo, Court Assistant