



**Mbatia v Republic (Criminal Appeal E017 of 2025)  
[2026] KEHC 3499 (KLR) (Crim) (17 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3499 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL E017 OF 2025  
KW KIARIE, J  
MARCH 17, 2026**

**BETWEEN**

**DAVID MWANGI MBATIA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E023 of 2021 of the Senior Principal Magistrate's Court at Engineer by Hon. R.L. Musiega –Resident Magistrate)*

**JUDGMENT**

1. David Mwangi Mbatia, the appellant herein, was convicted of the offence of rape contrary to section 3(1) as read with section 3 (3) of the [Sexual Offences Act](#) No.3 of 2006.
2. The particulars of the offence were that on the 1<sup>st</sup> day of January 2021, at Mumui area, in Kipipiri Sub-County, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of F.W.N. without her consent.
3. The appellant was sentenced to serve ten years' imprisonment. He was aggrieved and has appealed against both conviction and sentence. He raised grounds of appeal as follows:
4. The respondent did not submit any grounds of opposition or submissions.
5. This is a first appellate court. As expected, I have analysed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of Okeno vs the Republic [1972] EA 32.
6. The ingredients of the offence of rape are set out in section 3 of the [Sexual Offences Act](#), which states as follows:



A person commits the offence termed rape if—

- (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
- (b) the other person does not consent to the penetration; or
- (c) the consent is obtained by force or by means of threats or intimidation of any kind.

7. The only evidence that implicates the appellant is that of the complainant. F.W.N. (PW1) testified that she was roused from sleep by some torchlight. Her evidence was as follows:

My name is T. W. N. I come from Mumui. It is within Nyandarua County. I am unemployed. I was at home on 1<sup>st</sup> January, 2021. The accused came and got hold of me. I was inside the house. The accused broke into my house and entered. My house is a mud house. He accused broke door. He entered and got hold of my legs and did bad things to me. He followed me to bed. I was sleeping. It was midnight. I saw the accused because he had a torch. He had pointed the torch at me. The accused had the torch in his hand when he got hold of me. I was in bed. I had clothes. The accused removed my clothes forcefully. He removed my inner my clothes. He raped me. I was scared, and I refused. He used force to rape me. No one came to my rescue. Later, I left and went to my child's place. Her name is D. N. She lives near me. I went at night. I left the boy inside my house. I found my daughter, and I told her what had happened. My daughter left and went to check at my house. She did not find him. I slept at my daughter's house. I do not know whether I went to the police station. There is a police station called Mumui. The accused comes from within my home. His name is Mwangi. He is a neighbour. I was able to see the accused when the torch was on. I saw the accused when he was entering.

I do not remember if he spoke. I went to the police and recorded my statement. I was taken to the hospital, and I was tested. I went to Mihendi Hospital. I do not remember whether I was taken to the Engineer hospital. I do not remember which papers were filled out for me by the doctor. I went to the hospital with Diana. I am 70 years old.

Cross-examination By The Accused Person

You pointed the torch while standing. I saw the incident on my own. I was not told. I saw you on my own, and I identified you. You were not in Nairobi on that day.

8. It is worth noting that the complainant was not in a position to identify the person who raped her, if indeed she was raped. With the torchlight directed at her, she could not use it to identify her attacker. Secondly, her evidence is incoherent. When the medical evidence was adduced, it was stated that it was noted that she was mentally challenged. This would have called for corroborative evidence on the identity of the person who raped her.
9. The alleged offence occurred on January 1, 2021. Her examination and completion of the P3 form took place on April 1, 2021. Dr. Newton Karanja (PW4) stated that it was difficult to confirm rape after three months, and I concur. The woman was 70 years old, and it is unlikely that evidence of rape would be visible after three months, especially since the medical report noted that the victim reported no struggle.
10. PC Nancy Kendi (PW3) testified that the complainant informed her that she identified the appellant by voice. She said that the complainant further told her that when she tried to scream, the appellant covered her mouth. These details were not in the complainant's evidence. In her evidence, the



complainant said she could not remember if he talked. These are material contradictions. The Court of Appeal in the case of *Ndungu Kimanyi vs Republic* [1979] KLR 283 (Madan, Miller and Potter JJA), described as follows:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

11. The complainant's evidence required corroboration.
12. David Mwangi Mbatia, the appellant, maintained an alibi, asserting that he was in Nairobi at the time of the offence. When an accused raises an alibi defence, they do not assume any burden to prove that it is the truth. This was stated in the case of *Kiarie vs Republic* [1984] KLR, where the Court of Appeal held:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

13. In the instant case, the prosecution did not displace the alibi defence of the appellant.
14. I find that the conviction of the appellant was not based on sound evidence.
15. The upshot of the preceding analysis of the evidence is that the conviction was unsafe. I quash the conviction, set aside the sentence, and set the appellant at liberty unless lawfully held.

**DELIVERED AND SIGNED AT NYANDARUA, THIS 17<sup>TH</sup> DAY OF MARCH 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**

