



REPUBLIC OF KENYA



KENYA LAW
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**Wanjuki v Republic (Criminal Appeal E111 of 2025)
[2026] KEHC 3374 (KLR) (11 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E111 OF 2025
DR KAVEDZA, J
MARCH 11, 2026**

BETWEEN

LINCOLN KINYANJUI WANJUKI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal an appeal against the original conviction and sentence delivered by Hon. Murage (P.M) delivered on 29th July 2024 at Kibera Chief Magistrate's Court Sexual Offences Case No. 85 of 2016 Republic vs Lincoln Kinyanjui Wanjuki)

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of attempted rape contrary to section 4 of the [Sexual offences Act](#) No. 3 of 2006. He was sentenced to serve five (5) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution evidence against which he was convicted. He argued that the trial court failed to consider his defence. He urged the court to quash his conviction and set aside the sentence imposed.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).
4. The prosecution's evidence was as follows: On 27th August 2016, PW2 AMW, who was then aged 18 years (born 11 May 1998, as confirmed by her birth certificate), testified that she was at her aunt's single-room house in Kangemi washing utensils around 4.00 p.m., together with her aunt's child. The appellant, a neighbour who had resided in an adjacent room for about one week, entered the house without invitation and sat on the edge of the sofa. PW2 moved to the other side of the door and



took a cap intending to leave. The appellant pushed her down, got on top of her as she struggled. He attempted to close her mouth, removed her grey trouser and, inserted his fingers into her private parts causing pain. He then removed his penis and rubbed it on her thighs until semen was ejaculated onto her thighs. She pushed him off then he got up and left.

5. PW2 zipped up, went outside briefly, re-entered the house, waited until her aunt returned, then called her father. The following day, 28th August 2016, she explained the events to her aunt (PW1) and the landlady. The landlady summoned the appellant, who was told to pay Kshs 5,000 to settle the matter privately, though no payment was made. A report was later made at Kabete Police Station.
6. PW1 Susan Maina, aunt to PW2, testified that on 28th August 2016 she was informed by her husband at night, and directly by PW2 the following day, that the appellant had entered the house and sexually assaulted PW2 by inserting fingers into her private parts. PW1 stated that the appellant had been their neighbour for three weeks. She took PW2 to Nairobi Women's Hospital on 29th August 2016 (not on 28 August as initially stated), where they presented the inner pant and trouser worn during the incident. PW1 did not examine PW2 herself when she first heard of the matter. The family did not receive the Kshs 5,000 demanded by the landlady from the appellant's family.
7. PW3 John Njuguna, a clinician at Nairobi Women's Hospital, testified that PW2 was attended on 29th August 2016. Genital examination was not performed because PW2 was not ready for it. He produced the Post-Rape Care (PRC) form, in which PW2 reported that her last consensual sexual intercourse had been in December 2015.
8. PW4 Inspector Pauline Katungi testified that on 30th August 2016 she was assigned the case at Kabete Police Station. She interviewed PW2, who narrated the events of 27th August 2016 accusing the appellant of the sexual assault. PW4 recorded statements from PW1 and PW2, filled the P3 form, and took possession of the trouser and pant, which she handed to PC Irene Mutie. She interrogated the appellant following his arrest on 31st August 2016. He admitted knowing PW2 for a few days, claimed she had invited him to the house, and alleged consensual romantic activity that day, which PW2 denied. PW4 produced a copy of PW2's birth certificate.
9. In his defence, the appellant gave evidence in his defence denying the offence. He stated that on 27th August 2016 he resided alone in Kangemi in a compound with other tenants. He denied knowing PW2, denied seeing her in court, and denied any reconciliation meeting with the landlady or family. He produced copies of statements from PW1 and PW2 and OB No. 76/31/8/2016 when the alleged incident was reported. Further, that the alleged torn clothes were not produced in court.
10. On the issue as to whether the prosecution proved the guilt of the appellant to the required standard, the ingredients of the offence of attempted rape are as follows: Section 4 of the *Sexual Offences Act*, defines attempted rape as

“Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.”
11. The high court in *Moses Kabue Karuoya v Republic* [2016] eKLR, Mativo, J (as he then was), stated as follows regarding the ingredients of attempted rape:

“...I reiterate that the key ingredients of the offence before me can be summarized as follows, namely, (a) Intend to commit the offence; From the evidence tendered, I find that intent was



established. The second requirement is (b) the accused must begin to put his intention to commit the offence into execution by means which are adapted to its fulfilment. This means that the accused begins to carry out his intention to commit the offence in a way suitable to bring about what he intends to achieve. Evidence tendered is that the appellant knocked her down, lied on her, lowered her panty & forcefully opened her legs. Lastly the accused must (c) Do some overt act which manifests his intention; that is, the accused performs an act which is capable of being observed by another (although it may not have been) and which in itself makes clear his intention to commit the offence.”

12. The appellant was convicted of attempted rape contrary to section 4 of the *Sexual Offences Act*. The prosecution bore the burden of proving beyond reasonable doubt that the appellant acted in such a manner that there was no doubt as to his intention to rape, that the intention was manifest by his conduct, and that he was about to rape the complainant but was stopped in the nick of time by intervening circumstances.
13. PW2 the complainant, aged 18 years at the material time, testified that on 27th August 2016, while washing utensils alone in her aunt’s single-room house, the appellant, a neighbour residing in an adjacent room for approximately one week, entered without invitation. He sat on the sofa edge, then pushed her to the ground as she moved to leave, mounted her while she struggled, attempted to cover her mouth, removed her grey trouser and inner pant, inserted his fingers into her vagina causing pain, exposed his penis, rubbed it on her thighs, and ejaculated semen thereon. PW2 pushed him off and he ceased and left. This conduct of overpowering the complainant, partially undressing her, fondling her private parts, and preparing his penis for penetration, manifested an unequivocal intention to rape without verbal expression, halted only by her resistance and his premature ejaculation as a *factus interveniens* preventing penetration.
14. PW1 Susan Maina, the complainant’s aunt, corroborated that on 28th August 2016 she learned from her husband at night and directly from PW2 the next day that the appellant had entered the house and inserted fingers into PW2’s private parts. PW1 took PW2 to Nairobi Women’s Hospital on 29th August 2016 with the trouser and inner pant worn during the incident. PW3 John Njuguna, clinician, produced the PRC form, recording PW2’s examination on 29th August 2016 although no genital examination was done as PW2 was not ready, but she reported last consensual intercourse in December 2015.
15. PW4 Inspector Pauline Katungi, assigned the case on 30th August 2016, recorded statements, filled the P3 form on 2nd September 2016, seized the clothing, and interrogated the appellant after his arrest on 31st August 2016. He admitted knowing PW2 briefly, claimed invitation and consensual romantic activity, which PW2 denied.
16. The appellant gave evidence denying the offence. He stated he resided alone in Kangemi on 27th August 2016 in a compound with other tenants, denied knowing PW2 or seeing her in court,
17. The trial magistrate considered the whole evidence, including the appellant’s bare denial. Pursuant to section 124 of the *Evidence Act* (Cap. 80), which permits conviction in sexual offence cases on the uncorroborated evidence of the victim alone where the court is satisfied she is telling the truth, with reasons recorded, the magistrate found PW2’s testimony credible, detailed, coherent, consistent, and unshaken on cross-examination.
18. The magistrate accepted her account of the appellant’s manifest intention through his forceful conduct. The defence failed to raise reasonable doubt. All elements of attempted rape were proved beyond reasonable doubt, and the conviction was proper and is affirmed.



19. The appellant was sentenced to serve five (5) years imprisonment. During sentencing, the court considered the pre-sentence report and exercised discretion. In the premises, I see no reason to interfere with the sentence.

20. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH 2026

D. KAVEDZA

JUDGE

In the presence of:

Kibera High Court Criminal Appeal No. E111 of 2025 Page 2 of 2

