



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. E020 OF 2025

EDWIN WAKHUNGU

APPELLANT

VERSUS

REPUBLIC

RESPONDENT

**(Being an appeal against the conviction and sentence in a
Judgement by Hon. V. O. Amboko (SRM) in Kakamega CMC. S.O No.
E093 of 2023 delivered on 10th January 2025)**

JUDGEMENT

Background

1. The Appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section (3) of the Sexual Offences Act No. 3 of 2006, the particulars being that between 14th and 16th August 2023 at (particulars withheld) within Kakamega County, he intentionally caused his penis to penetrate the vagina of MK, a girl child aged 15 years. Alternatively, he was charged with committing an indecent act with a child contrary to Section 11 (1) of the Sexual

Offences Act in that he was alleged to have touched the buttocks, breast and vagina of MK, a girl aged 15 years, with his penis.

2. After the Appellant pleaded not guilty to the charges, the case proceeded to full trial in which the prosecution called five (5) witnesses and upon being placed on his defence, the Appellant gave a sworn statement and did not call any witnesses. In a judgement delivered on 10/1/2025, the Appellant was convicted of defilement contrary to Section 8 (1) as read with 8 (4) of the Sexual Offences Act and sentenced to 15 years imprisonment.
3. Aggrieved by the decision of the trial court, the Appellant lodged an appeal in which he listed the following grounds:-
 1. *THAT, the learned trial magistrate erred in law and fact by failing to appreciate that the ingredients of the offence were not conclusively proved beyond reasonable doubt.*
 2. *THAT the trial court erroneously based my conviction and sentence on biased and inconclusive medical findings and shoddy investigation.*
 3. *THAT, the learned trial magistrate grossly erred in law and fact by failing to consider that the prosecution deliberately avoided to avail some crucial witnesses.*
 4. *THAT, the learned trial magistrate failed to note and consider that this was a systematic planned and implemented strategy to implicate me with this case.*

5. *THAT the trial court erroneously convicted the Appellant on contradictory and inconsistent evidence.*
6. *THAT, the trial court grossly erred in law and fact by failing to note and consider my defence and mitigation.*
7. *THAT, the learned trial magistrate erred in law and fact by failing to note that I was not accorded a fair trial as stipulated under Article 50 (2) (b) & (c) of the Constitution of Kenya 2010.*
8. *THAT, more grounds to be adduced upon receipt and perusal of the trial court proceedings and Judgement copy.*

The Evidence

4. The Evidence before the trial court was that on the material date, the victim, who testified as PW1 after *voir dire examination*, left her home to go to the market. On her way back, she passed through a path passing Tom's house. Tom was Edwin's employer. As she reached Tom's fish pond, Edwin called out to say he wanted to tell her something. She went home, handed over the shopping to her mother, then went back. Edwin told her to accompany him, and they walked to Tom's house. Edwin locked the gate, invited her into the house and told her to sit. He then locked the door from the outside. This was about noon. Edwin is the Appellant herein. Around 4.00 p.m., the Appellant came back and forced her into sexual intercourse. He then forced her to sleep in his house, and the next morning, he locked her in the house and left at 6.00 a.m. He came back again at 3.00 p.m., when they had sex, then had

more sex in the evening. On the third day, he locked her in the house and left, but her father rescued her, accompanied by her uncle Mohammed and a village elder. She then went to the police station to report, and she was taken to the hospital by her father and a police officer. At the hospital, she was examined and treated. The victim said that she was born on 4/9/2007 and was 15 years old at the time of the incident.

5. On cross-examination, the victim said that the path passing through Tom's shamba was a shortcut, and the fish pond is in Tom's shamba. She said that the door was locked from the outside while the window was locked with a wire, and she did not have the strength to remove the wire. She said that the Appellant used to leave her food, and she used to go out for short calls at night. She said she feared screaming because the Appellant used to walk around with a slasher. She denied being forced to testify.
6. PW2 was the victim's father. He testified that on 14/8/2023, he got home at 2.00 p.m. and did not find MK, whom he had left at home. She did not come back, and in the morning, he reported to the village elder Mercylline. On 16/8/2023, someone informed him that they had met MK near the fish pond. He went to the Appellant's house to ask if he had seen MK. He found the door locked and, on checking through the window, he saw MK and the Appellant. He informed Mercylline, and she got other *Nyumba Kumi* members. He went to the police station and were accompanied by some police

- officers. On arrival at the scene, they found MK in the house. The Appellant, on seeing them, opened the door and ran away, but was apprehended by *Nyumba Kumi* members. They took MK to the police station, then to the hospital, where she was examined, and P3 and PRC forms were issued.
7. Cross-examined, he said that Kennedy Khayumbi Shivachi gave him the information.
 8. PW3 was Mohammed Shibweche, a *Nyumba Kumi* member. He testified that on 16/8/2023, at 7.00 a.m., he received a call from Mercyline, the village elder, who directed him to Tom's house, as a school child had been found there. He called his three colleagues and they went to Tom's house. Along the way, they met Mercyline and PW2, then proceeded to the compound. Mercyline called out at the gate, and the Appellant opened the door, and on seeing them, started running towards the gate, whereby they ran after him and apprehended him as he was trying to escape through a different gate.
 9. The village elder Mercyline Muhonja testified as PW4. She recalled that on 15/8/2023 at around 4.00 p.m., she received a report from PW2 that his daughter was missing. She advised him to report the incident at Kambiri Police Station. On 16/8/2023, PW2 went to her house at around 7.00 a.m. and informed her that he had seen his daughter in Tom Manyisi's house. She mobilised *Nyumba Kumi* members, and they went to Tom's house. They knocked on the

- gate. The Appellant came, opened, and then started running away. The *Nyumba Kumi* members gave chase and apprehended him. MK, who was inside the house, came out. Police came and arrested the Appellant and took him and MK to the Station.
10. Jeferson Mutibo, a Clinical Officer attached to Kambiri Health Centre testified next. He said that on 16/8/2023, MK arrived with her parent, who reported that MK had gone missing on 14/8/2023 and was found at her friend's house at 7.00 a.m. on 16/8/2023. The witness said that the victim claimed that the Appellant was her boyfriend and that they had sex with him on 15/8/2023. He examined her and found her genitalia normal and the hymen broken. A high vaginal swab did not reveal the presence of sperm. He filled out a P3 and PRC form, which he produced. He confirmed that the patient was defiled.
 11. On cross-examination, PW4 said that the victim said that she had sex on 15/8/2023 and that she last had sex in September 2022. He said that depending on whether the victim was sexually active and her age, there would be tears.
 12. The last witness was the Investigating Officer who testified that on 15/8/2023, he received a report from Fresha that her child had gone missing. He recorded the report in the OB. The following morning, he received a call from the victim's father stating that the Appellant had been arrested by civilians after they traced MK with the help of *Nyumba Kumi* members. He went with PC Wanjala, arrested the

Appellant, and then took him into custody. They interrogated the victim, who said that on 14/8/2023, she met the Appellant and he invited her to his place of work, where he locked her up and had sex with her against her will that day and the next day. The witness said that on 16/8/2023, MK was found after a search. The Appellant was apprehended, and, upon receiving a call from MK's father, they went to the Appellant's place and arrested the Appellant. He took witnesses statement and issued a P3 form.

13. In defence, the Appellant stated that on 14/8/2023, he did his work in his boss's shamba until 3.00 p.m. when he retired. The next day, he woke up to work and did not finish cultivating the shamba. He left at 4.00 p.m. On 16/8/2023, in the morning, he heard someone ring the gatebell. He went to check and, on opening the gate, saw two men who had pulled his shirt. PW3 slapped him and commanded him to sit down. He saw a lady and a girl to his left. On inquiring why they hit him, they asked why he did not know what he had done, then called the police, who came and took him to Kambiri Police Station, then to the hospital. The complainant was also taken to the hospital. He said that PC Karoti and Wanjala asked him for money and told him to plead guilty in court. The Appellant said that there was no evidence that he defiled the girl, as there were no sperm or bruises.
14. The appeal was canvassed through written submissions.

Submissions

15. The Appellant submits that the prosecution did not prove its case beyond reasonable doubt as there was insufficient evidence to justify the conviction. Further, the Appellant submits that the charge sheet was defective as he was charged with the offence of defilement under Section 8 (1) as read with Section 8 (3) as opposed to Section 8 (1) as read with Section 8 (4) of the Sexual Offences Act bearing in mind the fact that the victim was 16 years at the time of the incident. It is the Appellant's submission that the charge sheet was defective in totality contrary to Section 214 (1) of the Criminal Procedure Code. He relies on the case of **Yongo v. Republic [1983] KLR** and argues that the defect was substantial and could not be cured by Section 382 of the Criminal Procedure Code.
16. The Appellant contends that the age of the victim was not proved to the required standards and relies on the cases of **Alfayo Gombe Okello v. Republic [2010] eKLR** and **Canel Musiya v. Republic [2023] eKLR**.
17. The Appellant also submits that penetration was not proven as the evidence of the Clinical Officer was not conclusive for failure to link him to the offence. Notably, the fact that the torn hymen was old and the genitalia normal meant that the Doctor's findings did not connect the date of the alleged defilement with the age of the

injuries. The Appellant relied on **Ben Mwangi v. Republic, Nairobi HCCR.A. No. 471 of 2001.**

18. Regarding the witnesses, the Appellant submits that the prosecution's failure to call crucial witnesses, notably Kennedy Khayumbi Shivachi, to ascertain whether the victim was in the compound where she was allegedly found, should have been held to be adverse to its case.
19. Finally, the Appellant submits that the prosecution's case was full of contradictions and doubtful evidence. If the trial court had addressed the said contradictions and inconsistencies, it would have arrived at a different conclusion. Relying on **Dinkerrai Ramkushna Padya v. Republic [1990] EACA 93**, he submits that the court should not rely on the contradictory testimony of any of the witnesses.
20. The Respondent submits that the prosecution proved all the ingredients of the offence, namely, the age of the victim, that there was penetration and that the Appellant was positively identified as the perpetrator. Regarding the age of the victim, it is submitted that the age of the victim was proven by the production of the birth certificate. On penetration, it contends that the trial court concluded that the minor had been penetrated based on the contents of the P3 and the evidence of the victim, based on Section 124 of the Evidence Act.

21. On the issue of identification of the perpetrator, the Respondent submits that the evidence of PW1, PW2, PW3 and PW4 was sufficient to positively identify the Appellant. The Respondent relies on **Changtoek & Another v. Republic [2023] KEHC 25442 (KLR)** and posits that the Appellant was identified by recognition.
22. In response to the contention that the prosecution failed to call crucial witnesses, it submits that no number of witnesses is required to prove the prosecution's case and that the ingredients of the offence were proved by the witnesses who gave evidence in court.

Analysis and Determination

23. As the first appellate court, the court's duty is to revisit and re-evaluate the evidence afresh, analyze the same and make its independent conclusions while bearing in mind that unlike the trial court, it did not have the opportunity to hear and observe the witnesses as they gave their evidence. **See Okeno v. Republic [1972] EA 32.**
24. The issues that arise for determination in this matter are as follows:-
 - (a) *Whether the charge sheet was incurably defective.*
 - (b) *Whether the prosecution's case was riddled with grave inconsistencies and contradictions.*
 - (c) *Whether the elements of defilement were proved beyond reasonable doubt.*
25. The initial charges facing the Appellant were defilement contrary to Section 8 (1) as read with Section 8 (3) of the Sexual Offences Act,

whereas he was convicted of defilement contrary to Section 8 (1) as read with Section 8 (4) of the Sexual Offences Act. It is important to reproduce the relevant sections of the said charges. Section 8 (1) of the Sexual Offences Act states as follows:-

“A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.”

26. Section 8 (1) of the Sexual Offences Act does not provide a penalty clause as the penalties in respect to a charge of defilement are not uniform. The law contemplates differential penalties, with the severity of punishment decreasing as the victim's age increases. Whereas the penalty for a conviction under Section 8 (1) as read with Section 8 (3) would be 20 years imprisonment, the penalty upon conviction for defilement under Section 8 (1) as read with Section 8 (4) is 15 years imprisonment. It therefore means that the Appellant was convicted of an offence that resulted in less severe consequences than if he had been convicted under the original charge.

27. Section 134 of the Criminal Procedure Code states:-

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

28. A charge sheet outlines the specific criminal charges facing an accused person and is used to initiate criminal proceedings. It is therefore the cornerstone of a fair trial as envisaged by Article 50 of the Constitution. It should contain the essential elements of the offence, including the date and place of the offence, the particulars of the accused, the section of the law allegedly violated, and the penalty clause. It must contain sufficient details to enable the accused to know the exact nature of the offence for which he is charged, to enable him to prepare his defence. In short, a charge sheet must be precise and clear.
29. Where a charge sheet is vague, ambiguous, or lacks the essential ingredients of the offence, it is rendered defective as it may confuse the accused and hinder his ability to mount a proper defence, therefore occasioning a miscarriage of justice. In **Peter Ngure Mwangi v. Republic [2014] KECA 405 (KLR)**, the Court of Appeal stated that:-

“A charge can also be defective if it is in variance with the evidence adduced in its support. Quoting with approval from Archbold, Criminal Pleading, Evidence and Practice (40th Edn), page 52 paragraph 53, this Court stated in YONGO V R, (1983) eKLR that:

“In England it has been said: An indictment is defective not only when it is bad on the face of it, but also:

(i) when it does not accord with the evidence before the committing magistrates either because of inaccuracies or deficiencies in the indictment or because the indictment charges offences not disclosed in that evidence or fails to charge an offence which is disclosed therein,

(ii) when for such reason it does not accord with the evidence given at the trial.”

30. The trial court noted in its judgement that the evidence established vide the production of the birth certificate was conclusive that the victim was 16 years of age. The trial court observed that there was an error in the charge sheet as the Appellant was charged under the wrong section, but held that the error was curable under Section 382 of the Criminal Procedure Code.

31. Section 382 of the Criminal Procedure Code provides that:-

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.”

32. Flowing from the above, it is clear that errors in a charge sheet are not fatal unless they resulted in a failure of justice. The court needed to consider whether the particulars of the charge and the evidence adduced in support thereof made it clear to the Appellant that he was facing a charge of defilement and whether there was no prejudice caused by the failure to quote the correct section, bearing in mind the penalty attracted by the charge for which the Appellant was ultimately convicted.

33. In **Benard Ombuna v. Republic [2019] KECA 994 (KLR)**, the Court of Appeal considered the consequences of a defective charge sheet and held that:-

“15. In a nutshell, the test of whether a charge sheet is fatally defective is substantive rather than formalistic. Of relevance is whether a defect on the charge sheet prejudiced the appellant to the extent that he was not aware of or at least he was confused with respect to the nature of the charges preferred against him, and as a result, he was not able to put up an appropriate defence.”

34. Because the essential ingredients of the offence for which the Appellant was convicted remained the same, with the only distinction being age, and considering the fact that the initial charge sheet attracted a heavier penalty, the Appellant did not suffer any prejudice from the amendment. In **BNT v. Republic [2025] KECA 643 (KLR)**, the Court of Appeal rendered itself thus:-

“...As this Court held in Nyamai Musyoki vs. Republic [2014] eKLR, an appellant would only be entitled to an acquittal or retrial where a defective charge sheet prejudiced them. The test for whether a defective charge sheet caused prejudice to an accused person is substantive not technical: the question to ask is whether the accused person was charged with an offence known to law and whether the charge sheet, as framed, gave him, in clear and unmistakable terms, sufficient notice and information about the allegations he was facing in order to mount a defence.”

35. The Appellant was able to cross-examine the witnesses comprehensively regarding the incident, indicating no prejudice was suffered. The mere misquotation of the relevant sub-section of the law, to wit, the penalty clauses where the substantive offence is clear, is, in my mind, not fatal to the proceedings and therefore I hold that the trial court did not err in holding that the defect in the charge sheet was curable under Section 382 of the Criminal Procedure Code.

36. Regarding the contradictions and inconsistencies in the prosecution's case, the Court of Appeal in **Eric Onyango Odeng v. Republic [2014] KECA 523 (KLR)** held:-

“The hearing before the trial court invariably entails consideration of often contradictory, inconsistent and hotly contested facts. The primary duty of the trial court is to carefully analyse that contradictory evidence and determine which version of the evidence, on the basis of judicial reason, it prefers. It is the trial court, when it comes to questions of fact, which has the singular advantage of seeing and hearing the live witness testify and being subjected to cross-examination, that time-honoured device for testing the truth or correctness of evidence.”

37. It is trite that not every minor contradiction will result in evidence being rejected. In **Twahangane Alfred v. Uganda, Criminal App. No. 139 of 2001 [2003] UGCA 6**, the Court held that:-

“With regard contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution's case.”

38. Due to the nature of the human mind, it is naturally expected that no two people may recollect the same event to exactitude. Some witnesses may have poor memory. Others may find a certain segment of an incident more significant than another, and sometimes witnesses may observe different aspects of an incident more closely than others, or even arrive at the incident scene at different times, to which they will eventually be called to testify.
39. It has been held that to determine whether contradictions and inconsistencies should affect the credibility of a case, the court must consider the unique circumstances of every case. In **Philip Nyaka Watu v. Republic [2016] KECA 696 (KLR)**, the Court of Appeal held that:-
- “However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomena exactly the same way. Indeed as has been recognised in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature**

and extent of the discrepancies and inconsistencies in question.”

40. The Appellant singled out the victim’s narrative that her mother had sent her to the market and on her way back, she passed through a path near Tom’s house, and was called by the Appellant, and she went and handed over the items. He submitted that this contradicted the victim's father’s evidence that the day was Sunday and his wife had gone to church. I have analyzed the evidence by the 2 witnesses and find that the discrepancy is not significant or material. The victim did not say that her mother was at home when she went to the market; she only said that she handed the items to her mother after returning from the market, then went back to meet Edwin. As for PW2, he did not indicate that he was with his wife, so it could be that his wife finished church and arrived home before him.
41. Regarding the claim that the Clinical Officer testified that the victim had told him that the Appellant was her boyfriend, contrary to her evidence in court that she had no relationship with the Appellant, a review of the treatment notes confirms that the victim gave a history of having had a relationship of about 2 weeks with the Appellant with two episodes of sexual intercourse. However, it must be noted that the trial court observed the victim as she gave evidence and concluded that, notwithstanding the inconsistencies, she was truthful.

42. In this case, the material question is whether the Appellant committed an act of defilement on the victim and not whether they had a relationship. In any event, a romantic relationship or consent is immaterial as the victim was aged below 18 years at the time of the incident. The inconsistency in the victim's evidence does not go to the root of the sexual act itself. The court holds the view that the apparent inconsistencies in the evidence of the victim and that of the investigating officer were not so grave as to affect the prosecution's case. Moreover, there are other witnesses who gave direct evidence that the victim was found in the house that the Appellant emerged from and whose evidence resolves the inconsistencies that arose in the prosecution's case.
43. On the failure to call crucial witnesses, it is now settled that the prosecution needs only to call the number of witnesses necessary to prove its case. Section 143 of the Evidence Act provides that no particular number of witnesses is required to prove a fact. Therefore, where the prosecution adduces quality evidence from key witnesses the absence of other possible witnesses is immaterial. The Appellant contends that the Kennedy Khayumbi Shivachi, whom PW2 said had informed him that he had seen PW1 in the Appellant's compound, should have been called as a witness, and the failure to call him should be treated adversely. In the case of **Bukenya v. Uganda [1972] EA 549**, the Court of Appeal held that failure to call crucial witnesses by the prosecution entitles the

court to make a conclusion that such a witness would have given evidence adverse to the prosecution's case.

44. Having reviewed the evidence as a whole, I do find that the said Kennedy Khayumbi would have been a crucial witness if there were no other witnesses who saw the victim with the Appellant. PW2 testified that he saw the victim and the Appellant through the window when he went there pursuant to the information from Kennedy Khayumbi and another unnamed person. His evidence was corroborated by PW3 and PW4, who went to the Appellant's place and found him there with the victim. The failure to call Kennedy therefore was not fatal to the prosecution's case.

45. I now turn to the final issue, whether the offence was proved. The first element of the offence is proof of age and It is now settled that whereas proof of age is a critical component in sexual offences matters, its proof not solely restricted to birth certificates. The principles to be observed in determining the age of a victim in a sexual offences matter are founded on Rule 4 of the Sexual Offences Rules [2014] which provides:-

“When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.”

46. In **Mwalango Chichoro Mwanjembe v. Republic [2016] KECA 183 (KLR)**, the court held that:-

“The question of proof of age has finally been settled by recent decisions of this Court to the effect that it can be proved by documentary evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof. It has even been held in a long line of decisions from the High Court that age can also be proved by observation and common sense...”

47. The minor's age was established by producing the birth certificate. The court notes that during *voir dire* examination, the victim stated that she was 15 years old, and had just done her class 8 studies that year. In her evidence, she stated that she was born on 4/9/2007. The birth certificate produced shows that the victim was born on 4/9/2007. Since the offence took place between 14/8/2023 and 16/8/2023, the victim was 16 years of age at the time. The Appellant did not object to the production of the copy of the birth certificate during trial.
48. I note that the trial court, which had the opportunity to observe the witnesses, found it necessary to subject the victim to *voir dire* examination. This inevitably leads to the conclusion that the victim's apparent age was that of a minor. In the circumstances, I am satisfied that the age of the victim was conclusively proven through her oral testimony and by production of the birth certificate

contrary to the Appellant's submissions that the court relied on insufficient evidence regarding the age of the victim to convict him.

49. On proof of penetration, the legal standard for "penetration" under Section 2 of the Sexual Offences Act is the partial or complete insertion of the genital organs of a person into the genital organs of another. A ruptured hymen, per se, is not proof of penetration, nor is the presence of spermatozoa in the female's genitalia. In **Eric Onyango Odeng v. Republic (Supra)**, the Court of Appeal held that:-

"In sexual offences, the slightest penetration of a female sex organ by a male sex organ is sufficient to constitute the offence. It is not necessary that the hymen be ruptured."

50. The evidence that I gathered from a review of the primary treatment documents, the P3 form, the PRC form and the testimony of the Clinical Officer is that the victim was sexually active. The victim gave a graphic account of how the Appellant had sex with her. Coupled with the evidence of the other prosecution witnesses, the court finds that the trial court was right in applying the provisions of Section 124 of the Evidence Act and in concluding that the victim was telling the truth. The P3 form and PRC report indicates that the victim was found with evidence of habitual sexual exposure. Considering the evidence in totality, I find the evidence of the victim credible and sufficient to prove that penetration did occur as claimed.

51. As to the identity of the perpetrator, the evidence was that the Appellant was known to the victim and her father as he was a neighbour. Identification was therefore by recognition. Recognition has long been established as the best form of identification. See **Reuben Taabu Anjanoni & 2 others v. Republic [1980] KECA 23 (KLR)**.
52. The Appellant was caught red-handed coming out of the house where the victim was found, and he attempted to flee. He would not have fled if he were innocent. Moreover, in his defence, the Appellant tendered a mere denial in which he claimed to have been alone during the days of the incident. The defence did not dislodge the prosecution's case, which was overwhelming in the circumstances as a whole.
53. The trial court carefully considered the essential elements of the offence and came to the conclusion that the charge had been proved. I find no grounds to fault this finding.
54. Regarding the sentence, the Appellant was sentenced to the minimum mandatory sentence which the Supreme Court has affirmed as lawful. See **R v. Joshua Gichuki Mwangi [2024] KESC 34 (KLR)**. The court's hands are therefore tied as we are bound by the decision of the apex court.
55. The upshot is that the appeal against conviction and sentence fails and is dismissed and the Judgement of the lower court upheld. The Appellant has a right of Appeal.

Dated, signed, and delivered at Kakamega this 28th day of April 2026.

**A. C. BETT
JUDGE**

In the presence of:

Appellant present virtually

Ms. Chala for the Respondent/State

Court Assistant: Polycap

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