



**Mwanjala v Republic (Criminal Appeal E024 of 2023)  
[2025] KEHC 943 (KLR) (24 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E024 OF 2023  
AN ONGERI, J  
JANUARY 24, 2025**

**BETWEEN**

**ALI JUMA MWANJALA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the sentence of Hon. C. K. Kithinji (PM) meted  
on 28th June 2022 in Voi PM Sexual Offence Case No. E020 of 2022)*

**JUDGMENT**

1. The Appellant pleaded guilty to the charge of attempted rape contrary to Section 4 of the [Sexual Offences Act](#) No. 3 of 2006.
2. The facts were as follows:-

The facts are that on 8.6.2022 at around 10:00a.m SM was on her way from home heading to a meeting at Voi town. She was on a call on her mobile phone when she spotted a unknown man following her from behind. When she finished talking on her phone the unknown man stood in front of her and took her mobile phone and bag and commanded her to follow him. She feared and followed him to a sisal shamba. The accused took a scarf the complainant had on her neck and tied her on her mouth nose and ears and told her he would rape her and kill her. He then started struggling her and pulled her dress up so that he could rape her. At that point the complainant saw one Lazaro a passerby and called for help. When accused saw Lazaro he stopped and ran away. Lazaro followed him and accused was caught at Mwakingali Embakasi area by members of the public. Police officer from Voi Police Station went to the area and arrested the accused. The complainant positively identified him as the person who tried to rape her. He was rearrested and is today 10<sup>th</sup> June 2022 charged in court. I have



the P3 form of the complainant dated 8.6.2022 P.exhibit 1. Treatment notes of 8.6.2022 P.exhibit 2.

3. The Appellant was convicted on his own plea of guilty and sentenced to twenty (20) years imprisonment.
4. The Appellant has appealed to this court on the following grounds:-
  - i. That the plea of guilty was motivated by the pain and agony which the Appellant was going through after being subjected to mob (in)justice.
  - ii. That the offence herein was committed in a state of intoxication and as such the Appellant had diminished responsibility and culpability.
  - iii. That lengthy incarceration of the Appellant does not serve the purposes of rehabilitation from substance abuse but the court would have employed the policy of diversion and committed the Appellant to a substance rehabilitation facility to help him eradicate his addiction.
  - iv. That the learned trial Magistrate erred in law and fact by failing to appreciate that the plea of guilty was not unequivocal.
  - v. That the sentence imposed was harsh and excessive since it was applied without considering the Appellant's mitigation or the unique facts and circumstances of the case.
5. The parties filed submissions as follows:- the appellant submitted that his plea was motivated by the pain he was undergoing after being subjected to mob justice. The plea was taken a day after the appellant was arraigned in court and he was still in excruciating pain. It was his argument that his plea of guilty was not made after sound legal advice as he was not represented by an advocate during trial. The appellant argued that he was a lay man and ignorant of court proceedings. As a result, he was not aware of the possible sentence that awaited him in the event that he pleaded guilty.
6. The prosecution submitted that Section 348 of the *Criminal Procedure Code* bars appeals from subordinate where an accused was convicted upon a plea of guilty except on the extent of the legality of the sentence. From the record it is clear that the plea was unequivocal. The charge was read in a language that the appellant understood and replied to both the charge and facts in Kiswahili confirming his guilt.
7. The prosecution further submitted that the appellant was a repeat offender. He was previously charged and convicted for the offence of rape. The Trial Court noted that he was just released from prison after serving his sentence. The appellant was not remorseful neither was he rehabilitated. The sentence of 20 years was therefore appropriate and necessary.
8. This being a first appeal, the duty of the first appellate court are as follows:- The Court of Appeal in *Okeno v Republic* [1972] EA 32 held that:

“ An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v Republic* (1957) EA. (336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M Ruwala v R* (1957) EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the



trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post* [1958] EA 424.”

9. The sole issue for determination is whether the sentence was excessive.
10. I find that the Accused person pleaded guilty and saved the court’s time.
11. I reduce the sentence of twenty (20) years to ten (10) years imprisonment.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF JANUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Maina

The Applicant – present

