



REPUBLIC OF KENYA



**Wambua v Republic (Criminal Appeal E051 of 2023)
[2025] KEHC 901 (KLR) (24 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E051 OF 2023
AN ONGERI, J
JANUARY 24, 2025**

BETWEEN

MUTHAMA WAMBUA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the sentence of Hon. Wangeci (SPM) in Voi CM
Sexual Offence Case No. E014 of 2022 delivered on 28th February 2023)*

JUDGMENT

1. The Appellant was charged with the offence of rape contrary to Section 3(1)(a)(b) (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the charge were that on 13th August 2022 at around 1502hours in Mwatate Sub County within Taita Taveta County the Appellant had carnal knowledge of MN, a mentally and physically challenged person.
3. The Appellant pleaded guilty to the charges despite being cautioned by the court on the seriousness of the charge.
4. The facts were as follows:-

On the 13th day of August 2022 at around 1502 hours in Mwatate Sub County within Taita Taveta County, intentionally and unlawfully caused his penis to penetrate the vagina of VMN who is mentally and physically disabled.
5. The trial court convicted the Appellant on his own plea of guilt and sentenced him to life imprisonment.
6. The Appellant has appealed against the sentence on the following amended grounds of appeal:-



- i. That the learned trial Magistrate erred both in law and fact by convicting and sentencing him to life imprisonment by a case of rape of a 30 years woman having three (3) children mature enough to make decision of her own apart to disability challenged.
 - ii. That the learned trial Magistrate erred both in law and facts by failing to find that even if the woman she was disabled with disability does not mean that she cannot have sex with a man at the age of 30 years old and she had feelings.
 - iii. That the learned trial Magistrate erred both in law and fact by failing to find that the woman was not virgin she had children three (3) of them in number which she had been born with other men.
 - iv. That the learned trial Magistrate erred both in law and fact by convicting and sentencing him to life imprisonment yet pleaded guilty after one witness testifying in court. A true evidence that he pleaded guilty and there was no rape the woman agreed to have sex with him. He did it several times not once for she was not virgin. The woman she had feelings of sex.
 - v. That the learned trial Magistrate erred both in law and fact by failing to find that the conviction and sentence it was harsh and excessive according to the age of the woman which was not under age only basing the conviction on the mental and physical challenges and disability.
 - vi. That the learned trial Magistrate erred both in law and fact by failing to evaluate the evidence of the P3 form and analyze it and find that this was not a defilement or a case of rape. It was agreeable not by force. Only that her mother got annoyed when she got them having sex in the house in the room.
7. The parties filed submissions as follows:- the prosecution submitted that the appellant was convicted and sentenced on his own plea of guilty. Section 348 of the Criminal Procedure Code bars appeals from subordinate courts where an accused was convicted on his own plea of guilty except on the extent and legality of the sentence. In support the prosecution cited the case of *Olel v Republic* [1989] KLR 444, it was held that: -
- “Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (cap 75) does not merely limit the right of appeal in such cases but bars it completely.”
8. The prosecution further submitted that the sentencing policy guidelines point 23.4 the Court has to consider both aggravating and mitigating circumstances when sentencing. The Trial Court took into consideration that the complainant had mental and physical afflictions. The appellant took advantage of the complainant's special circumstances to rape her. It was the prosecutions argument therefore that the trial court was correct in its sentencing considering the circumstances.
9. I find that the plea was unequivocal.
10. The sentence is also lawful.
11. I dismiss the appeal and uphold the sentence.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF JANUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOI.

ASENATH ONGERI
JUDGE



In the presence of:-

Court Assistant: Maina

The Appellant present at Manyani Prison

