



REPUBLIC OF KENYA



**Macharia v Republic (Criminal Appeal 2 of 2023)  
[2025] KEHC 3727 (KLR) (Crim) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3727 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 2 OF 2023  
KW KIARIE, J  
MARCH 26, 2025**

**BETWEEN**

**JOSEPH GATUNDU MACHARIA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal case No. 945 of 2015 of the Chief Magistrate’s Court at Nyabururu by Hon. V. Ochanda–Resident Magistrate)*

**JUDGMENT**

1. Joseph Gatundu Macharia, the appellant, was convicted after pleading guilty to defilement contrary to section 8 (2) as read with section 8 (2) of the [Sexual Offences Act](#).
2. The particulars of the offence are that on diverse dates between the 2<sup>nd</sup> day of April 2015 and the 5<sup>th</sup> day of April 2015 within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of BW, a child aged eleven years.
3. The appellant was sentenced to life imprisonment. He was aggrieved and filed this appeal in person. He raised the following grounds of appeal:
  - a. The trial magistrate erred in law and fact while convicting the appellant herein without considering that he was mentally unstable.
  - b. The trial magistrate erred in law and fact, losing direction in convicting the appellant without complying with section 11 of the [Penal Code](#). He was mentally challenged and could not raise any issue of his examination under sections 107 and 109 of the [Penal Code](#).



- c. The trial magistrate erred in law and fact while convicting the appellant, for he pleaded guilty without considering he was misdirected by the police officer who availed him to court to plead guilty, taking advantage of his retarded mind.
4. The state conceded to the appeal through E.P.O. Omooria, learned prosecution counsel. This was based on the appellant's mental condition prior to and after the plea and conviction.
5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
6. Section 348 of the *Criminal Procedure Code* provides as follows:
- No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.
7. In the submissions filed by the ODPP, it was stated:
- According to the record, after the appellant was convicted and sentenced, he appeared in court and was subsequently admitted to Mathari Mental Hospital for treatment. also, the treatment notes attached herein indicate that he had been attended to for mental illness even before he was charged in court in court.
- He is, therefore, likely to have been of unsound mind at the time of the offence.
8. I am therefore persuaded that the appellant may have been of unsound mind when the offence was committed. The criminal law was not intended to punish mentally sick people who committed an offence while not in control of their minds.
9. Ordering a retrial after ten years will be of no value. It may not be possible to establish his mental status at the time of the offence with certainty, and the complainant may not be able to recollect what transpired. For these reasons, I will quash the conviction and set aside the sentence. The appellant is set at liberty unless otherwise lawfully held.

**DELIVERED AND SIGNED AT NYANDARUA THIS 26<sup>TH</sup> DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

