



**JGG v Republic (Criminal Appeal E003 of 2024)  
[2025] KEHC 6949 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL E003 OF 2024  
JK NG'ARNG'AR, J  
MAY 28, 2025**

**BETWEEN**

**JGG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. JGG, the appellant herein, was charged with the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*. The particulars of the offence were that on diverse dates between 1<sup>st</sup> and 30<sup>th</sup> June 2019 at [Particulars Withheld] Sagana Division Kirinyaga West sub county within Kirinyaga County, the appellant caused his penis to penetrate the vagina of JWG, a female aged 16 years who was to his knowledge his daughter. He faced an alternative count of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act*. The particulars of the offence were that on the same days and in the same place, the appellant intentionally and unlawfully touched the breasts of JWG a child aged 16 years.
2. The appellant faced a second count of incest contrary to section 20 (1) of the *Sexual Offences Act*. The particulars of the offence were that on diverse dates between 1<sup>st</sup> and 31<sup>st</sup> August 2020 at [Particulars Withheld] Sagana Division Kirinyaga West sub county within Kirinyaga County, the appellant caused his penis to penetrate the vagina of NWG, a female aged 14 years who was to his knowledge his daughter. He again faced an alternative count of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act*. The particulars of the offence were that on the same days and in the same place, the appellant intentionally and unlawfully touched the breasts of NWG a child aged 14 years.
3. When the appellant was arraigned in court, he pleaded guilty to the offences of incest on both counts. The prosecution read out the facts giving rise to the charge sheet to which the appellant stated that the facts were correct and true. He stated that though the minors were not biologically his, they



came with their mother when he married her. Though he could not identify their respective ages, he confirmed that they were indeed children. Accordingly, the trial court convicted the appellant on his own admission of the charges and the facts elaborated to him. The court sentenced him to seventy years on each count that were ordered to run consecutively.

4. The appellant is dissatisfied with those findings. He filed a petition of appeal dated 7<sup>th</sup> December 2023 and amended grounds of appeal annexed to his written submissions. He prayed that his conviction be quashed and the sentence be set aside so that he is set at liberty on account of the following abridged grounds: he was convicted in the absence of sufficient evidence yet the prosecution had not proved beyond reasonable doubt that he had committed the offence that he was charged with. The learned magistrate failed to consider his cogent defence. He was convicted on the apparent basis that there existed a grudge between himself and the complainant's family. Finally, he lamented that the sentence meted out was harsh and excessive.
5. The appeal was heard by way of written submissions. The appellant filed two sets of submissions: one dated 14<sup>th</sup> March 2025 and the others undated. He argued this court to implore compassion and apportion a sentence that reflected the principles of justice and constitutional safeguards. He prayed that the court takes into account his mitigation and admission of guilt. He further attached certificates evincing that he had been rehabilitated since he was placed in police custody. He stated that he was very remorseful and regretted his actions. He prayed that his sentence be reconsidered.
6. The respondent opposed the appeal. In its written submissions dated 2<sup>nd</sup> August 2024, the respondent submitted that the appellant was convicted on an unequivocal plea of guilty. It however submitted that from the record, the appellant was not cautioned on the consequences of the plea of guilty. It was of the considered view that in the circumstances, the lower court proceedings amounted to a mistrial. It thus prayed that the matter be remitted back to the trial court for a re-trial before another magistrate since the appellant has only served 3 of the 140 years of imprisonment.
7. The duty of this court as a first appellate court was enunciated by the Court of Appeal in the case of *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR that held as follows:

“An appeal to this court from a trial by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must consider the evidence, evaluate it itself and draw its own conclusions, although it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
8. This is a conviction arising from the appellant's plea of guilty. Although the appellant raised several grounds challenging the conviction, it appears that he abandoned those grounds only focusing on the sentence meted out. The appellant was convicted on two counts for the offence of Incest contrary to section 20 (1) of the *Sexual Offences Act*. The provision provides as follows:

“(1)Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.”



9. The trial court considered the appellant's mitigation and the victim impact assessment report before convicting the appellant to imprisonment for a term of 70 years imprisonment for each offence. The trial court further ordered that the sentences to run consecutively.
10. It is not denied that the minors in this case were 14 and 16 years of age. In other words, the minors were below the age of 18 years. This attracted a sentence of life imprisonment couched in mandatory terms. In this case, the prosecution did not appeal against that sentence which is unlawful. In fact, they posited that a re-trial was the solution on account of the fact that the appellate was not warned on the consequences of pleading not guilty. However, the appellant was not challenging the conviction. In any event, he understood the charges and on his own volition admitted adding that he was remorseful. I find that he therefore understood the gravity and nature of the offences that he had been charged with. That regardless, the appellant maintained that he was guilty all through until his sentence. Furthermore, the respondent did not appeal on any of those grounds.
11. The recent decisions of the Supreme court in the cases of Republic vs. Joshua Gichuki Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) and Republic vs. Manyeso [2025] KESC 16 (KLR) have found that the mandatory nature imposed in sexual offences is not unlawful and courts were reminded that no discretion arose from mandatory sentences. This sentence would have in the circumstances been interfered with because it is unlawful. The appellant ought to have been condemned to life imprisonment. However, since the prosecution failed to appeal against the sentence, I am only compelled to dismiss the appellant's appeal in its entirety.

It is so ordered.

**JUDGEMENT DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF MAY, 2025.**

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**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of the Appellant and Mamba for the Respondent. Siele/Mark (Court Assistants).

