



REPUBLIC OF KENYA



**Njagi v Republic (Criminal Appeal E004 of 2023)
[2025] KEHC 7068 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E004 OF 2023
JK NG'ARNG'AR, J
MAY 28, 2025**

BETWEEN

PETER MUCHIRA NJAGI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of Hon. P. M. Mugure (PM) at Wanguru Law Court Sexual Offence Case No. 4 of 2020 delivered on 14th January 2023)

JUDGMENT

A. Introduction

1. The Appellant was convicted in 2 counts of the offence of defilement contrary to Section 8(1) and (3) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the offence were that on diverse dates between 6th day of November 2019 and 17th day of November 2019 at [particulars withheld] Village in Mwea East Sub County within the County of Kirinyaga intentionally caused his penis to penetrate the vagina of MW a child aged 13 years. The Appellant was sentenced to serve 50 years' imprisonment. He was aggrieved by the conviction and sentence and lodged this appeal.
2. The grounds of appeal are that:
 - a. The learned trial magistrate erred in law and facts in disregarding that fact that the evidence adduced was full of inconsistencies and was not corroborated.
 - b. The learned trial magistrate erred in law and facts in failing to consider the medical officer's testimony that there was no penetration.
 - c. The learned trial magistrate erred in law and facts in disregarding my unshakable sworn defence.



- d. The learned trial magistrate erred in law and facts in failing to consider my defence witnesses.
- e. That I pray this honourable court to be supplied with the records to file further grounds of appeal.

B. Prosecution case

3. The prosecution called 8 witnesses stating with the minor complainant who testified as PW1. After voire dire was conducted, PW1 testified she was 15 years old having been born on 6th January 2006 though at the time of the ordeal she was 13 years old and at the time she was living with her grandmother who had since passed on. She further testified that the Appellant had defiled her thrice and he had not only defiled her but also her sister Melan Wamuya. She could recall it was on 6th November 2019 when she went to fetch firewood at Ndima Tea Factory while in the company of her said sister and E. At the time the Appellant was grazing donkeys as he went to where they were at and pulled his sister so she and E left. After a while he went to where they were at and carried her away thus causing E to leave. He placed her on the ground, removed her panty as he removed his trouser and underwear then forcefully inserted his penis in her vagina. She never reported to anyone and so on 9th November 2019 she was still in company of her sister and E as they went to look for accused's son – Njenga but they did not find him. As she sat on the seat, Appellant went there, held her by the neck as he covered her mouth, removed his trouser and underwear and once again defiled her though he did not defile her sister.
4. Again on 17th November 2019 she was with the sister, E and another by the name of K as they had gone to fetch firewood at Ndima Tea Factory when K went to swim in the river while Appellant was grazing donkeys so this time round he pulled her as her sister left. He laid her on the grass, removed her pants as he removed his trouser and underwear and once again inserted his penis in her vagina. After he finished, she wore her clothes and at the time K had returned so they went home. She still never reported to her grandmother and since they never used to have food to eat at home, one day while at school E developed stomach pains so she was taken to the hospital where it was revealed she had also been defiled by the Appellant, who was her uncle.
5. It was then that all of them were taken to hospital and that was the chance they got to narrate their frequent ordeals with the Appellant. In cross examination, she stated she did not know Appellant was Njenga's father at the time they went to play with Njenga, denied he gave her money after the ordeals and she described how Appellant had dressed in all the 3 occasions. She added she had lived with her grandmother since she was 5 years old until she died and Appellant was her grandmother's neighbour with his father being N but she had no idea N had claimed her grandmother was the cause of the death of their cows for the 2 were friends.
6. After voire dire, PW1's sister testified as PW2 but this time the trial magistrate noted she did not appreciate or know what taking an oath was so she gave unsworn evidence. That although she was 15 years old having been born on 2nd January 2006, at the time of the ordeal on 6th November 2019, she was 13 years old and was living with her late grandmother then. She went on to corroborate PW1's evidence of how the first ordeal occurred on the aforesaid date as she added that once Appellant called them as he was grazing the donkeys, he made them lay on the ground where he inserted his penis in her vagina. She felt pain but once Appellant was done he let her go so she continued to fetch firewood and since he called PW1, she went home alone.
7. On the second time he defiled her, they had gone to his house where he laid them on the seat before defiling them as he also promised to give them money and so she witnessed the Appellant defiling PW1 though clarified that this second time she was not defiled. Her further corroboration of PW1's evidence was when she testified of how she was defiled again by the Appellant while they were at the river where



- K was swimming at. It was only when E told their teacher she was unwell that during her treatment she reported of having been defiled by the Appellant who was her uncle. In cross examination she described the clothes Appellant had worn then but PW1 did not witness her being defiled the first time.
8. That the first and third time she was defiled was in the forest while the second time it was at Appellant's house. Once at the hospital, the complainants were examined by one Patrick who had unfortunately gone for training at the time of the hearing thus causing George Kariuki (PW3) to testify on his behalf as he stated he was acquainted with both his handwriting and signature. For PW1, he confirmed she had been taken to the hospital with a history of having been defiled on 6th, 9th and 17th November 2019. Examination of her genitalia revealed she had a foul smelling whitish discharge, no injured though the hymen had been perforated and save for urinalysis which showed pus cells though noted that they were taken to the hospital 3 months after the ordeal. He then put her on antibiotics and analgesics as he concluded that she had been defiled. In cross examination, he confirmed the hymen was due to an old perforation.
 9. E W (PW4) was the Appellant's third victim whereby I note that voire dire was not conducted but she gave unsworn evidence by stating that she was 11 years old though she did not know her birthday date. Although she was in Grade 3 at the school therein, she confirmed she used to live with her mum and siblings though her grandmother, aunt and cousin used to reside in the same compound. She identified the Appellant as her uncle living on the upper side of their compound as he was her mother's brother. She could not recall the exact date it was though she had gone to fetch firewood at Ndima forest when she just saw someone behind her. Her further testimony was that on looking at the person, she saw it was her uncle the Appellant herein so he held her hand then threw her down from where he removed her clothes and did bad manners to her.
 10. She did not stop there as she went on to describe the bad manners done to her by the Appellant was that he put the thing he used to urinate with in her vagina. Since it was still during school going period, she was in pain the following day on a Monday but when the pain in her abdomen persisted, she reported to her teacher that she was unwell. The said teacher in turn reported to the head teacher who in the company of the school nurse took her to the hospital where she reported she had been defiled. The head teacher sent her brother to call her mother who went to school and the defilement narration she had given them was given to her. It was then she revealed that both PW1 and PW2 had also been defiled by the same Appellant when they had gone to fetch firewood and she insisted that personally, he had defiled her 4 times.
 11. She further corroborated PW1 and PW2's evidence of the money Appellant had promised to give them as she added she had never reported to anyone for Appellant and threatened to beat her if she did. In cross examination she added that although it was dark in the forest at around 4pm, she was able to see the Appellant whom she recognized as her assailant and she went on to describe the clothes he had worn on the material evening. She insisted that although she could not recall the exact year it was, the Appellant had defiled the other 2 complainants though they never told her if they had also been threatened if they reported.
 12. PNW (PW5) testified she had been a teacher at [Particulars withheld] Primary School for 6 years and that was the same school all the complainants were schooling at hence she knew them. She had noted that on 21.1.2020 while in class PW4 was missing and since it was a Monday, she waited until the next day when she reported to school and asked why she had missed the previous day. She informed her of the pain in her lower abdomen as she also noted she was looking fearful. Since she had reported to her of pain while urinating, she sent her to the health teacher whom she told of her uncle the Appellant had defiled her thrice. She described her uncle to them as the one who used to have donkeys and he had defiled her when she had gone to collect firewood.



13. It was her further testimony that she had reported the ordeal to her mother who ignored her and told her she did not want to hear her gossips. This caused her to report the incident to the head teacher as she also reported to her that both PW1 and PW2 who were twins had also been defiled by the same Appellant. They police were involved and in their company, they took all the complainants herein to the hospital where it was confirmed they had been defiled severally by 'uncle Mucira' as described by PW4. Once the name was given to her, she realized the said uncle was father to Njenga, with the latter being a student in her class. She however knew E as a truant but they summoned Appellant to school but he failed to show up.
14. In cross examination she stated PW4 never reported to her of having been threatened and when they called her mother, she denied being aware of the same. She also never interrogated the other complainants but the head teacher informed her of their reports. For Ann Wangu Wanjohi (PW6), she testified she was also a health teacher at the said school and on 21st January 2020, class 2 teacher informed her of a student in her class who has stomach pains so she called the student who confirmed the pains were in her lower abdomen as she confirmed she was not on her monthly periods. The said student was PW4 who looked fearful so she promised not to reveal any information she was going to give her. It was then PW4 opened up and reported her uncle who used to have donkeys had defiled her 4 times and PW1 and PW2 who were twins had also been defiled by the same uncle.
15. They reported to the head teacher who in turn called the twins from class and their defilements had started at the forest then later in a house. She however did not know who the said uncle was as she only met him in court. In cross examination she confirmed that PW4 narrated her ordeal to her alone and sent the twins to their grandmother. However, PW4 never told her how many uncles she had, she never asked of his name and how many times she had been defiled and only heard the Appellant was a parent at their school though saw him for the first time when they came to court.
16. GMM (PW7) testified she was the head teacher of the aforesaid school and of how PW6 went to the office while in the company of the 3 complainants herein. They reported PW4 was not in school the previous day and when she reported to PW6 and PW7 she was unwell, she was taken to the dispensary where it was confirmed she had been defiled the previous Saturday by her uncle Peter Mucira while at Ndima forest where she had gone to collect firewood so he followed her there and defiled her. She had gone on to report to her mother who asked her to stop gossiping but when she called her she denied the same but insisted she had just relocated to Baricho hence did not want many issues.
17. PW4 further reported to her of the twins herein also having been defiled by her same uncle whom she found in the forest and promised to give them Kshs.100/- for they were hungry. That the complainants herein were partial orphans because they had no father yet their mother was not living with them so they used to be assisted by ACK church. After interrogating them she informed the area assistant chief and the OCS and when she called their grandmother she was helpless for she had one hand as the complainants were taken to the hospital for treatment. She added that the complainants were vulnerable for they had no food and they used to go to the Appellant who used to make chapattis and had promised them money for food and their grandmother could not assist them.
18. In cross examination she said the Appellant was a parent at their school and he had gone there to deny the allegations against him after he had been released on bond and she described the manmade forest where the defilements used to occur at. PC Faith Maloba (PW8) testified he was the investigating officer in this case and she had been called by OCS Wanguru and asked to immediately head to the aforesaid primary school and corroborate PW5, PW5 and PW6's evidence as they all narrated to her what had been reported to them by the 3 complainants. She went on to also corroborate the complainants evidence and that she accompanied them to the hospital where they were examined and treated. She also



recorded all their statements, visited the scene while in the company of PE7 and PW8 and thereafter arrested the Appellant. That she had interrogated the complainants in the presence of the children officer and when she interrogated PW4 who was also Appellant's sister, she did not wish for the case to proceed for she was not in good terms with her husband hence Appellant was the one taking care of her and PW4.

19. She was aware her daughter had been defiled by her brother but she opted not to cooperate with the police and at the scene she noted there was natural lighting on the exact spots shown to her. Her further testimony was that even after Appellant was charged in court, he went on to threaten PW4. At the hospital, she stayed outside as the complainants were being examined by the doctor and PW4's mother became hostile and refused to record her statement after Appellant was arrested. Since she was investigating the case, it took time to have the accused arrested as she added that the complainants could be given Kshs.50/- or Kshs.100/- after being defiled.

C. Defence case

20. Once put on his defence, the accused in his sworn defence denied defiling the complainants on the stated dates for he had left home on 4th November 2019 only to return on 9th November 2019 where he got home at 7.30pm hence he was not around to defile the complainants. He insisted that on the last date of the defilement he could not have defiled the complainants for he had spent the entire day from 8am till 4pm in church which was 2km from his home. In conclusion, that he had been framed with this case for in one of the alleged days he had been in the company of Samuel Kimani when they went to Karaba market where he bought goats. It was their neighbour Wamuyu, PW1 and PW2's grandmother, who had framed him up for she also used to poison their cows as she had always had a grudge against them.
21. In cross examination he listed down his children names and ages as he stated he used to live with his wife and children while their neighbour Wamuyu was living with her children and the twins herein who were her grandchildren. The donkeys belonged to his father which they used to tether at Ndima forest and other times at their compound. He admitted there was a time he used to make chapattis and porridge which he would sell though that was in the year 2018. He further admitted that PW4 was his niece for she was his sister's daughter who he had no grudges against. It was Wamuyu who had tried to kill their father's cows though he personally had no grudge against her as he added that PW4 was in the same class with his son Njenga. To him, this case emanated from the teachers whom he held no grudges against them and in re-examination, he said it was Wamuyu who had coached the children.
22. Jane Njeri Njoroge (DW2) testified of how on 18th January 2020 he saw Appellant clearing his plot and in the evening while preparing supper she saw him pass by his home only for her to hear later he had been arrested for defiling PW4. In cross examination she said she knew Appellant as he had schooled with her second born child and more so they were family friends. Although she had recorded her statement in 2022 and she could recall that day well for she had gone for a group meeting at Makuti. Samuel Kimani Ngigi (DW3) testified he was Appellant's neighbour and on 12th November 2019 he had taken him to Karaba market and when Appellant stayed there for long to get the goat he wanted, he left him there at 10am.
23. He confirmed that by then Appellant's business was for making chapatti and porridge and selling them though in 2022 he was selling sugarcane. In cross examination he said that although he had carried Appellant so many times on his boda boda, this was the only time he had taken him to buy goats at the said market. Mercy Muthoni N (DW4) testified she was Appellant's sister and that on 18th November 2019 she found him in church, they spent the whole day there and when she left school at 5pm, she still left him in church. She had a child in the same school whom she had gone to pay school fees for



when she heard the allegations of her brother having defiled their niece. That Wamuyu Gladys had a fight with their family as she alleged Appellant had defiled her grandchildren. She denied allegations against him for he was their praise leader who would teach the youths songs.

24. Judy Wainoi (DW5) testified Appellant was her brother and PW5 her daughter and that she was called by her teacher and told that her daughter had alleged to have been raped by her brother. She asked her daughter about it but she denied so she accompanied them to the hospital and was present when she was examined. She added that her daughter and another by the name of Wairimu had not been defiled but then recanted her statement by stating that Wairimu had been defiled by her boyfriend in school. She vehemently denied her daughter told her she had been defiled by the Appellant and in cross examination she said she had returned home after separating with her husband with none of her siblings having a problem with her living in their father's house since 2018. She further recanted her evidence by stating she was not in the doctor's room when the complainants were being examined and thereafter both the teacher and children officer told her they had not been defiled so they returned home.
25. A month later Appellant was arrested so she asked the teacher what was going on and she said she was the cause of his arrest. She denied refusing to record her statement with the police and further denied sending her daughter to fetch firewood. Interestingly, she denied they used to have donkeys at their home belonging to their father for they had all died and her daughter had told the teacher in her present that Appellant had only attempted to defile her. Gerald Muriithi N (DW6) who testified she was also Appellant's sister and with him having separated from his wife, he used to sleep in lodgings and not at their home. She contradicted DW5's evidence by stating their father had 3 donkeys which were still alive and at their home which even the Appellant would use when he was around.
26. Appellant had several businesses including selling porridge and chapattis for a long time and after his arrest is when his wife left him. To her the Appellant had been framed up for she doubted he had defiled them for the twins' grandmother had a grudge with their mother.

D. Appellant's submissions

27. He submitted that it was a teacher who came up with a story to fame him up for her own interests and PW1's evidence of defilement was not corroborated by the clinician's evidence as he had testified the hymen was intact, she had no lacerations, her genitalia looked normal hence the ingredient of penetration was not proved. That all witnesses evidence was contradictory and malicious and all the medical reports for all complainants proved there was no penetration hence the offence of defilement did not occur. There was contradiction of clinician's evidence when he stated that the age of injuries was 2 months yet he had not found any injuries and there was no reason why the complainants had not reported to anyone.
28. Further, it had been more contradictions for the complainants testified it was dark in the forest where they were defiled with the evidence from the teacher confirming PW1 was a truant. PW5 was dishonest in saying she was the one that took the complainants to the hospital but she was never told the results thus asked the court not to believe her. The complainants had also lied by giving another scene for the offence being near the river where K was swimming. It was interesting to see him state that proof beyond reasonable doubt did not mean proof beyond shadows of doubt and so the prosecution had not proved their case beyond reasonable doubt with the benefit which ought to go to him and for him to be acquitted.



E. Respondent's submissions

29. It submitted that it had proved all the ingredients of the offence of defilement against the Appellant being the age of the victim, proof there was penetration and Appellant had been identified as the assailant. This led to the conviction of the Appellant and eventual sentence for 50 years' imprisonment.

F. Analysis and determination

30. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. For this see the case of Okeno vs Republic [1972] EA 32. In that regard considered the evidence as recorded by the trial court, the grounds of appeal, submissions filed and case law cited. While reanalyzing the above evidence as adduced before the trial court, I am minded of the fact that unlike the trial court, I did not get the benefit of taking evidence from the witnesses first hand and observe their demeanor and for that reason I will give due allowance.
31. In view of the above, I have perused and considered record of appeal together with submissions filed by parties herein and find that following as issues for consideration:
- a. Whether ingredients for offence of defilement were proved beyond reasonable doubt.
 - b. Whether sentence imposed was harsh and excessive.
32. The ingredients for the offence of defilement are penetration, age of minor and identification of assailant. The Appellant had no issues with the ingredients of the age of the complainants and his identification as the assailant and so the only issue he had and raised in this appeal was the ingredient of penetration was not proved beyond reasonable doubt. Penetration is defined under Section 2 of the [Sexual Offences Act](#) as follows: "the partial or complete insertion of the genital organ of a person into the genital organs of another person." Penetration is thus proved through the evidence of the victim/complainant corroborated by medical evidence. The testimony of the complainants in this case coupled with their medical examination must be sufficient to determine whether penetration occurred. Where the medical examination may not be available or conclusive, the court ought to weigh with thorough scrutiny and utmost caution, the evidence of the child, in order to determine whether there was penetration.
33. All the complainants herein being PW1, PW2 and PW4 narrated of how they had been defiled by the Appellant in various occasions with the first occurrence having occurred on 6th November 2019 at Ndima forest where they had gone to collect firewood. They all testified as to how the Appellant laid them on the ground individually then removed their panties as he removed his trouser and underwear then he defiled them. It was their further evidence that they heard PW1 being defiled once again by the Appellant in his house and to be precise, on his seat. The third ordeal for PW1 occurred back at the same forest. It was clear evidence that had PW4, being Appellant's niece would not have reported to her teacher on 21st November 2019 that she was experiencing abdominal pain and more so when urinating and the quick action of her teacher who referred her to their health teacher, the said offence against them could not have been discovered.
34. Once the matter was reported to the head teacher (PW7) and her also quick action of reporting to the area local administration and the police, and thereafter rushing them to the hospital after informing both their parents/guardian. It was at the hospital where they narrated to the clinicians of what had been done to them and upon examination, their medical documents proved that: for PW1, she had no



bodily injuries but on examination of her genitalia, she had no bruises in the labia though the hymen was not intact. She also had a whitish foul smelling discharge and for the hymen, there was an old perforation. What did the Appellant understand by the term perforation? Why did he choose to read and understand what he wanted for it was clear that the hymen was not intact unlike him submitting that the hymen was intact? It was the clinician's conclusion that the offence of defilement had occurred. From the foregoing, there is no doubt that penetration was proved beyond reasonable doubt.

35. On whether the evidence of the prosecution witnesses was corroborated, I wish to rely on Section 124 of the *Evidence Act*, Cap 80 provides as follows: "Notwithstanding the provisions of Section 19 of the Oaths and Statutory Declaration Act, where the evidence of the victim admitted in accordance with that Section on behalf of the prosecution in the proceedings against any person for an offence, the accused shall not be liable to be convicted in proceedings against him unless it is corroborated by other evidence in support thereof implicating him. Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offense, the court shall receive the evidence of the alleged victim and proceed to convict the accused person, if for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."
36. Record show that besides complainants evidence, which in my view is credible, all the complainants corroborated each other's evidence as they would be there when one or the other was being grabbed by the Appellant before he went to defile them. This the trial court considered and I find she was correct to state in her judgment the Appellant took advantage of their plight as they would trade food for sex for they were pushed in that situation due to hunger. This led to the Appellant promising them KShs.100/- and they would go to his house for chapattis which Appellant was making and selling them.
37. In *Oloo vs R* (2009) KLR, the Court of Appeal held that: "In our view, corroboration of evidence of a child of tender years is only necessary where such a gives child unsworn evidence. (See *Johnson Muiruri vs Republic* (1983) KLR).....in law evidence of a child given on oath after voire dire examination requires no corroboration in law but the court must warn itself that it should in practice not base a conviction on it without looking and finding corroboration of it". As noted above, it is my finding that the evidence adduced by the complainants before the trial court was adequately corroborated by the evidence adduced by the other prosecution witnesses. Further, the entries in the treatment noted and P3 forms produced and the testimony of the clinician who examined the complainants and filled the P3 form clearly evidenced penetration as noted above.
38. As to the alleged contradictions and inconsistencies in the prosecution case, it is trite law that not all discrepancies and inconsistencies are fatal to the prosecution case. The discrepancies must be of such gravity that they prejudice the accused. In *Mwangi vs Republic* [2021] KECA 345 (KLR) it was held:

"On the alleged failure of the first appellate court to address inconsistencies, glaring gaps and extenuating gaps, the position in law and which we fully adopt is as was stated, inter alia by the court in *Joseph Maina Mwangi vs Republic Criminal Appeal No. 73 of 1993*, that:

"In any trial, there are bound to be discrepancies and any appellate court in considering those discrepancies must be guided by the wording of Section 382 of the *Criminal Procedure Code* to determine whether such discrepancies are so fundamental as to cause prejudice to the Appellant or they are inconsequential to the conviction and sentences..."
39. Consequently, the issue is whether in this matter, there were indeed contradictions and inconsistencies and whether the said inconsistencies and contradictions were of such a degree that they prejudiced the Appellant. I thus wish to rely in a decision of the Court of Appeal in *Jackson Mwanzia Musembi vs Republic* [2017] eKLR where the appellate court cited with approval the Ugandan case of *Twahangane*



Alfred vs Uganda Cr. Appeal No. 139 of 2002 (2003) UGCA, 6, it was held that: “With regard to 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”.

40. Guided by the above, this court has noted the above allegations of inconsistencies and contradictions do not go into the substratum of the matter. The contradictions referred to by the Appellant is not material for it was that the clinician noted there were no injuries then claim later in the medical report that the injuries were 2 months old yet no injuries were noted in the labia majora. Further, that PW4 alleged to have been alone fetching firewood in the forest and that she was defiled on 4 occasions did not add up. That she further told the court that it was dark in the forest thus contradicting the other witnesses evidence for it was confirmed that at 5pm and not at night as PW4 wanted.
41. For this I wish to refer to the investigating officer’s evidence in chief when she testified: “..... I visited the scene. Forest different places Ndima Tea Factory. Visited the scene at about 12.00pm. It was not thick but not very big. Some places you can see others you cannot. Scenes spots had enough light....” Her evidence clearly explained how she saw the scene at noon and of how some places therein were darker than others thus corroborating the complainants evidence that it was dark at the time while at the same time there was light. Moving on to the other alleged contradiction according to the Appellant was that PW4 told her teacher that she had reported the defilement to her mother who informed her she did not want any gossips thus proof of doubt considering she was a truant.
42. Yes, that was the prosecution evidence but luckily, the Appellant availed his own sister who was also PW4’s mother one Judy Wainoi (DW5) who denied the entire evidence of her daughter having been defiled even by the Appellant. Speaking of contradictions, she was the one who denied that their home had donkeys belonging to their father for he alleged they were all dead. This evidence was contradicted by her own brother – Gerald Muriithi N who confirmed they had donkeys at their home which they would all use depending on their needs. All these were considered by the trial court where the entire defence case was analyzed at page 5 of her judgment thus the claim by the Appellant that his defence and defence witnesses evidence was not considered is clearly an afterthought.
43. In the end, I uphold both the conviction and sentence for all the grounds raised by the Appellant have been considered herein and deeply analyzed thus proving that the trial magistrate was right in her conviction and sentencing of the Appellant herein. This appeal is thus dismissed as the same is unmerited.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS AT BOMET THIS 28TH DAY OF MAY, 2025

.....

J.K.NG'ARNG'AR

JUDGE

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

