



REPUBLIC OF KENYA



KENYA LAW
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**Karani v Republic (Criminal Appeal E021 of 2025)
[2025] KEHC 11242 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E021 OF 2025
DR KAVEDZA, J
JULY 30, 2025**

BETWEEN

ANTONY KARANI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the sentence as per the judgement delivered on 23rd May 2024 by Hon. S. Temu (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case no. E090 of 2024)

JUDGMENT

1. The Appellant was charged and after full trial convicted by the Subordinate Court on two counts of offences; Count I was the offence of rape contrary to section 3(1)(a) and (b) as read with section 3(3) of the *Sexual Offences Act* No. 3 of 2006 and Count II was the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The trial court imposed a cumulative sentence of fifteen (15) years imprisonment to run from the date of plea, 15th August 2023.
2. Being aggrieved by the decision of the trial court, the appellant filed an appeal in this court vide a memorandum of appeal and an annexed supporting affidavit. He contended that the learned magistrate erred both in law and fact by failing to note that the appellant's right to fair trial had been violated, that the prosecution evidence was marred by material contradictions and inconsistencies, that there was no corroborative evidence to support the prosecutions' allegations and, that the prosecution failed to discharge their burden of proof to the standard required in law.
3. This being the first appellate court, we are guided by the ruling in *Okeno v. R* [1972] EA 32. In this case, the court opined that a court of first appeal ought to re-examine all the evidence afresh and in an exhaustive manner, to come up with its conclusions without overlooking the conclusions of the trial court, bearing in mind that it never saw the witnesses testify.



4. The prosecution called five witnesses in support of their case. On 21st July 2023, PW2, AMN, the complainant, testified that upon returning from her friend Leah's residence and entering her home, the appellant forcibly pushed her inside as she switched on the light. She noted the appellant wore a cap and had visible swelling on his forehead. Before she could question his presence, he brandished a knife, ordered her to shut up, closed the door, forcibly undressed her, and forcefully had sex with her without her consent.
5. Subsequently, Leah entered the premises and confronted the appellant, who stabbed her below her right breast and on her hand. The appellant then fled, leaving his clothing behind. PW2 accompanied Leah to Mbagathi Hospital, where both received medical treatment. On a later date, at a khat outlet, the appellant approached PW2, seeking forgiveness for stabbing Leah and requesting a further meeting. PW2 agreed, using the opportunity to inform the police, leading to the appellant's arrest on 12th August 2023.
6. PW1, Dr. Kanjama Erick, produced the complainant's P3 form, dated 25th July 2023, confirming a history of rape and a broken hymen. He also presented Leah's P3 form, dated 14th August 2023, and treatment notes, documenting a stab wound on the left side of her chest and a forehead scar caused by a sharp object.
7. PW3, CPL Senjelo, and PW4, PC Joel Muyia, arrested the appellant following reports of the alleged rape and his whereabouts. PC Muyia recorded witness statements and produced the clothing abandoned by the appellant at the complainant's residence. PW5, Inspector Mercy Muthoni, conducted an identification parade, during which PW2 identified the appellant. She produced a report of the parade as evidence.
8. In his defence, the appellant testified that on 12th August 2023, he met the complainant while going about his business. She asked him if she could buy him some drinks, and as they entered the designated pub, he found police officers waiting for him. They proceeded to search him for a knife and gun and found him with none. He maintained his innocence.
9. He was accordingly convicted on both counts.

Issues for determination

- a. Whether the prosecution proved the offense of rape against the accused beyond a reasonable doubt.
- b. Whether the prosecution proved the offense of threatening to kill against the accused beyond reasonable doubt.

Analysis.

10. Section 3 of the *Sexual Offences Act* No. 3 of 2006 provides thus;

3. Rape

- (1) A person commits the offence termed rape if—
 - (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
 - (b) the other person does not consent to the penetration; or
 - (c) the consent is obtained by force or by means of threats or intimidation of any kind.



11. The offence of rape is committed when a person intentionally and unlawfully causes penetration of the genital organs of another person without their consent. The prosecution must establish three key elements: intentional and unlawful penetration, absence of consent, and the identity of the perpetrator.
12. Further, in the case of in the case of *Kassim Ali v Republic Cr. App. No. 84 of 2005 (Mombasa)*, the court stated:

“... [The] absence of medical examination to support the fact of rape is not decisive as the fact of rape can be proved by the oral evidence of a victim of rape or by circumstantial evidence.”
13. From the record, PW2, AMN, the complainant, provided detailed testimony that on 21st July 2023, as she entered her home and switched on the light, the appellant forcibly pushed her inside, thereby gaining unauthorised entry. She observed the appellant wearing a cap and exhibiting swelling on his forehead, which aided her identification of him. He threatened her with a knife, creating an atmosphere of fear and coercion. He then forcibly undressed her and engaged in sexual intercourse without her consent. This account explicitly establishes intentional penetration and lack of consent, as the use of a knife and threatening language indicates that any compliance by PW2 was induced by fear, negating any possibility of voluntary consent.
14. The medical evidence adduced by PW1, Dr. Kanjama Erick, through the P3 form dated 25th July 2023, further corroborates the act of penetration, documenting a broken hymen consistent with PW2’s history of rape. The physical evidence of a broken hymen, coupled with PW2’s immediate reporting of the incident, strengthens the prosecution’s case on the element of penetration.
15. The identity of the appellant as the perpetrator is firmly established through multiple strands of evidence. PW5, Inspector Mercy Muthoni, conducted an identification parade, during which PW2 positively identified the appellant as the assailant.
16. Additionally, PW4, PC Joel Muya, produced the clothing abandoned by the appellant at the complainant’s residence, which serves as tangible evidence linking him to the scene of the crime. The subsequent encounter at the khat outlet, where the appellant approached PW2 seeking forgiveness for stabbing Leah, further corroborates his involvement in the events of 21st July, as it demonstrates consciousness of guilt.
17. In his defence, the appellant claimed that on 12th August 2023, he met PW2 while conducting his business, and she invited him for drinks, leading to his arrest by police who searched him for weapons and found none. This defence is notably silent on the events of 21st July, failing to provide any credible rebuttal to the prosecution’s detailed account of the rape. The defence narrative of an innocent encounter on a different date does not address the specific allegations or the corroborative evidence, including the medical report, identification parade, and recovered clothing.
18. The prosecution’s evidence is consistent and mutually reinforcing, with PW2’s testimony supported by medical findings, physical evidence, and the identification parade. The absence of any plausible explanation from the appellant for his presence at the scene or the abandoned clothing further undermines his defence. The prosecution has thus discharged its burden, establishing beyond reasonable doubt the elements of intentional and unlawful penetration, lack of consent, and the appellant’s identity as the perpetrator, thereby satisfying the requirements for a conviction under Section 3(1)(a) of the *Sexual Offences Act*.
19. In count II, Section 223(1) of the *Penal Code*, threatening to kill requires proof that: the accused made a threat to kill, with intent to cause fear or apprehension of death, and the threat was directed at a person.



20. PW2 testified that on 21st July 2023, the appellant brandished a knife and ordered her to “shut up” while forcibly pushing her into her home before committing the rape. The act of wielding a knife, coupled with a command to silence, constitutes a direct threat to PW2’s life, intended to instil fear to ensure compliance.
21. The knife, a lethal weapon, amplifies the threat’s severity, reasonably causing apprehension of death. Furthermore, the appellant’s subsequent stabbing of Leah, as witnessed by PW2, reinforces the credibility of the threat, as it demonstrates his willingness to use the knife. PW1’s medical evidence, documenting Leah’s stab wounds, supports the violent context of the incident.
22. The appellant’s identity is confirmed by PW2’s testimony and the identification parade conducted by PW5. The appellant’s defence does not address the events of 21st July, offering no counter to the prosecution’s account. While the threat was not explicitly verbalised as “I will kill you,” the brandishing of a knife in a coercive context satisfies the element of a threat to kill under Section 223(1). The prosecution’s evidence established all elements of the offence. The appellant’s conviction in count II is affirmed.
23. The appellant was sentenced to serve a cumulative sentence of 15 years’ imprisonment rather than a distinct sentence apportioned to each charge. Court of Appeal decision in Mohammed Warsame & Another v. Reginam (1956) 23 EACA 576. In cases where there is a plurality of charges, it is clearly stated in that case; and the words of Briggs, Ag. V-P in that regard may be set out here (p.577):

“As regards sentence, no authority is needed for the proposition that an omnibus sentence is unlawful. For every count on which a conviction is had there must be a separate sentence. Where, as has happened not infrequently in Kenya in Emergency cases more capital charges than one are tried together and convictions result, the Court may properly adopt either of two courses. It may pronounce sentence of death on each conviction, or it may pronounce sentence of death on one conviction and postpone sentence on the other or others. In the latter case, if the first conviction and sentence are set aside on appeal, the accused may be sentenced on another of the original convictions. In either case, it must be made perfectly clear on the record what has been done.”

24. In the case before the Court, the trial magistrate erred in passing an unlawful “omnibus” sentence for the offence of rape and threatening to kill.
25. Accordingly, for the reasons set out above, the Court pursuant to section 354 (3) (b) of the Criminal procedure Code alters the nature of the omnibus sentence of imprisonment for 15 years for the offence of rape and threatening to kill and substitutes therefor a sentence of ten (10) years imprisonment for the offence of rape and fifteen (15) years imprisonment for the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The sentences shall run concurrently from the date of plea, 15th August 2023.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY 2025

D. KAVEDZA

JUDGE

In the presence of:



Appellant Present

Chebii h/b for Mutuma for the Respondent

Karimi Court Assistant.

