



REPUBLIC OF KENYA



KENYA LAW
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**PMM v Republic (Criminal Appeal E028 of 2025)
[2025] KEHC 11108 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E028 OF 2025**

**DR KAVEDZA, J
JULY 29, 2025**

BETWEEN

PMM APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. P. Mutua (SPM) delivered in Chief Magistrates' Court
(Kibera) S.O. Case No. 48 of 2025 on the 18th day of February 2025)*

JUDGMENT

1. The appellant was charged and, after a full trial, convicted by the subordinate Court of the Offense of Incest contrary to section 20 (1) of the *Sexual Offences Act*. The particulars were on diverse dates between December and March 2023 in Nairobi County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of FK, a girl child aged 14 years, who, to his knowledge, was his daughter. He was sentenced to serve forty (40) years imprisonment,
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court, and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyze and re-evaluate the evidence that was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court, but bearing in mind that it never saw the witnesses testify.
4. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.



5. The prosecution called five witnesses to prove their case. The complainant, FK, testified after voir dire examination. She told the court that she was 14 years old. She testified that in December 2023, while she was alone and asleep in the house, she felt someone undressing her. It was her father who was on top of her. He forcefully inserted his penis into her vagina. She experienced pain, with blood and mucus from her vagina, leaving her unable to walk. She pushed him away and tried calling her mother, but he silenced her with a blanket, which he used to cover her mouth.
6. He assaulted her, threatening her life if she spoke out. Afterwards, she bathed and changed the bloodied bedsheet, which he hid. When her mother noticed her distress, the complainant disclosed the pain. The appellant bought a new sheet and assaulted her again when she refused to have sex with him. He began sleeping in her bed, threatening her when questioned. He also forced her to bathe in his presence.
7. She later became pregnant, which was confirmed at the chemist. She was then taken to the hospital for examination.
8. PW2, after a voir dire examination, testified that the complainant, FK, is her sister. She stated that their father, the appellant, frequently slept in FK's bed and committed the offence at night, which she described as 'tabia mbaya' (bad behaviour). PW2 corroborated the complainant's account, confirming she saw the appellant on top of her sister. She noted that she observed him moving from his bed to FK's bed, aided by light from a neighbour's house.
9. PW3, the complainant's mother, confirmed F.K.'s account of the incidents. She produced the complainant's birth certificate, showing her birth date as 19th February 2009, and accompanied the appellant to Highrise Police Station.
10. PW4, Asha Hassan, a community health promoter, was alerted about a minor defiled by her father. At FK's home, she disclosed the appellant's repeated assaults and his threats, preventing her from reporting. PW4 corroborated the complainant and PW2's testimonies, noting the mother's awareness but silence due to the appellant's threats. The complainant was taken to Shofco and then to Nairobi Hospital. PW4 saw the appellant at his home and during his arrest, where he was beaten by the public.
11. PW5, a clinician, examined the complainant, observing an old hymen tear and white discharge, indicating sexual activity or infection. A pregnancy test confirmed she was pregnant, though no DNA test was conducted to establish paternity.
12. PW6, the investigating officer, gave testimony that supported the complainant, PW2, and PW3's accounts.
13. In his defence, the appellant denied the charges. He stated that in April, he woke up and went to work at 8 pm. He heard a person inquiring whether someone had bhang in the plot. He then heard a bang at the door, and a crowd of boys entered his house; they took his money and phone. He then fainted, and upon gaining consciousness, he found himself at the police station.
14. Section 20 of the *Sexual Offences Act* deals with incest by males. It provides as follows:

“incest by male persons

20.

- (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.

- (2) If any male person attempts to commit the offence specified in subsection (1), he is guilty of an offence of attempted incest and is liable upon conviction to a term of imprisonment of not less than ten years.
 - (3) Upon conviction in any court of any male person for an offence under this section, or of an attempt to commit such an offence, it shall be within the power of the court to issue orders referred to as “section 114 orders” under the Children’s Act and in addition divest the offender of all authority over such female, remove the offender from such guardianship and in such case to appoint any person or persons to be the guardian or guardians of any such female during her minority or less period.”
15. The primary issue for determination is the relationship between the victim, FK, and the appellant, and whether he was positively identified as the perpetrator. She testified that the appellant is her biological father, a fact substantiated by her birth certificate, tendered in evidence by PW3, which records the appellant as the father. The complainant’s testimony provided a vivid and consistent account of the sexual assaults, detailing the appellant’s threats and actions. Although the incidents occurred at night, the appellant’s identity was unmistakable to the complainant, given their familial relationship.
 16. This identification was corroborated by PW2, the complainant’s sister, who witnessed the appellant moving to the complainant’s bed and engaging in what she termed ‘tabia mbaya’ (bad behaviour). Accordingly, this court holds that the appellant is both the complainant’s father and the perpetrator of the sexual assaults.
 17. Pursuant to the proviso to section 124 of the *Evidence Act* (Chapter 80, Laws of Kenya), corroboration of a minor’s testimony is not mandatory if the court, for recorded reasons, finds the child truthful. The trial magistrate found the complainant’s evidence credible, noting its consistency under cross-examination and corroborated with accounts of events stated to PW2, PW3, and PW4. This court concurs, finding the complainant’s testimony reliable and unshaken.
 18. Further corroborative evidence was adduced. PW2 confirmed the appellant’s nocturnal visits to the complainant’s bed, where he committed the sexual assaults. PW4, a community health promoter, testified that the complainant disclosed the appellant’s repeated defilement, deterred from reporting by his threats. PW5, a clinician from Coptic Hospital, examined the complainant, documenting an old hymen tear and white discharge, indicative of penetration and possible infection. A positive pregnancy test further corroborated the sexual encounter. Although no DNA test established paternity, the cumulative evidence suffices.
 19. Regarding the victim’s age, the complainant testified she was 14 at the material time. PW3 produced her birth certificate, confirming her birth on 19th February 2009, establishing her as a minor during the offences.
 20. Having established the appellant’s identity, his penetration of the complainant, his daughter, as per the birth certificate, and the minor’s age, this court finds that the prosecution proved its case beyond reasonable doubt. The trial court’s conviction is upheld.



21. On sentence, the prosecution established that the complainant was 14 years old at the time of the offence, warranting a sentence of life imprisonment. However, the trial court, in exercise of its discretion, imposed a sentence of 40 years' imprisonment.

22. The sentence is proportionate and justified, and there is no basis to disturb the sentence.

23. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 29TH JULY 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

