

KENYA / JUDGMENT

Wainaina v Republic

[2026] KEHC 13295 (KLR)

[2026] KEHC 13295 (KLR)

COURT

High Court

CASE / FILE NUMBER

Criminal Appeal E039 of 2021

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAKURU CRIMINAL APPEAL NO. E039 OF 2021 JACKSON WAINAINA.....APPELLANT VERSUS REPUBLIC.....RESPONDENT (Being an appeal against the conviction and sentence of Hon. R. Yator (PM) delivered on 29th November, 2021 in Molo Sexual Offences Case No. 101 of 2019)

JUDGMENT

1. The Appellant, Jackson Wainaina, was charged in Molo Sexual Offences Case No. 101 of 2019 for the offence of defilement contrary to Section (8)
- (1) (2) of the Sexual Offences Act. 2. The Particulars are that in between the nights of 18th and 19th days of August 2019 at Turi in Molo Sub-County within Nakuru County intentionally caused his penis to penetrate the vagina of DMO, a child aged 10 years. 3. The Appellant also faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act. The particulars were that in between the nights of 18th and 19th days of August 2019 at Turi in Molo Sub-County within Nakuru County intentionally touched the vagina of DMO, a child aged 10 years old, with his penis. 4. The Prosecution availed five (5) witnesses in support of its case. On his part, the Appellant tendered sworn testimony in his defence. He did not call any other witness. 5. Upon evaluating the evidence, the Trial Court found the Appellant guilty of the offence of defilement and imposed a sentence of life imprisonment. The Appeal 6. Aggrieved by the said judgment, the Appellant lodged the present appeal on both conviction and sentence, raising the following grounds of appeal which are summarised as follows: JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 1 1. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate that the prosecution evidence and the investigation officer were marred with contradictions which greatly violated the credibility of the prosecution evidence. 2. That the Learned Trial Magistrate erred in law and in fact in concluding penetration was proved by solely relying on broken hymen. 3. That the Learned Magistrate erred in law and in fact by pronouncing an excessive sentence far from the weight of the evidence adduced.

4. That the Learned Trial Magistrate erred in law and in fact by relying on the evidence of all witnesses without cautioning herself on the dangers of relying on such. 5. That the Learned Trial Magistrate erred in law and in fact by failing to consider his defence, yet the same was cogent, plausible and strong enough to water down the prosecution's case. 6. That the Learned Trial Magistrate erred in law and in fact in failing to appreciate that the medical evidence tendered by the prosecution did not support the charge. 7. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate that the medical evidence produced by the prosecution did not support or corroborate the charge, nor did it create a nexus to substantiate PW1's claims. 8. That in view of the circumstances life imprisonment sentence did not capture his offence as produced in Court. 7. On 22nd July 2025, the Appellant informed the Court of his intention to pursue the appeal on sentence alone, whereupon the Court directed that written submissions be filed. JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 2 8. Despite the Appellant indicating that he had filed submissions in the Case Tracking System (CTS) on 17th June 2025, none were traceable on the record. Only the Respondent's submissions were available to the Court. Respondent's submissions 9. The Respondent relied on the guidelines in R v Turnbull ([1977] Q.B. 224) to submit that, as per the Turnbull Guidelines, PW1 knew the Appellant. He hailed from the same locality with PW1. She used to see him regularly smoking, and the woman found at the alleged scene of crime was his mother. 10. Further that PW1 interacted with the Appellant from the evening of 18th to 19th and that was sufficient time for observation. It was argued that the incident was reported immediately at the police station; therefore, PW1's memory was still fresh and reliable. 11. On the issue of discrepancies, it is argued that the Appellant did not adduce any evidence that strongly disputed the establishment of knowledge. 12. On the credibility of medical evidence, the Respondent submitted that the P3 Form and the testimony of PW5 corroborated that there was penetration. Further, that under Section 124 of the Evidence Act, the Court may rely solely on the evidence of the complainant in a sexual offence case. 13. The Respondent relied on the findings in Godfrey Mwikamba Mburia vs Republic [2018] eKLR to submit that P3 forms are corroborative evidence and in George Kioji v. Republic (Nyeri Criminal Appeal No. 270 of 2012) where the Court held that while medical evidence is welcome in sexual offence cases, it is not strictly mandatory to secure a conviction for defilement. 14. As for the sentence, it was submitted that the sentence was commensurate with the offence.

Analysis and determination

JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 3 15. This being a first appeal, the Court is enjoined to reconsider the evidence, re-evaluate it, and draw its own conclusions, while bearing in mind that it neither saw nor heard the witnesses. 16. However, and as earlier stated herein, the Appellant, on 22nd July 2025, elected to pursue the appeal on sentence only. Consequently, the conviction is no longer in issue before this Court, despite the Respondent submitting otherwise. The appeal is on the legality, propriety and proportionality of the sentence of life imprisonment imposed by the trial Court. 17. Under Section 8 of the Sexual

Offences Act, the sentence depends on the age of the victim. The younger the child, the greater the vulnerability and the harsher the penalty imposed to serve the objectives of deterrence, retribution and protection of society. 18. In the present case, PW4, the Investigating Officer, produced the Birth Certificate (PExh-1) which indicated that the victim (PW1) was born on 2nd February, 2009. The offence took place on the nights of 18th and 19th August 2019. 19. The victim was therefore ten years old at the material time. Section 8(2) of the Sexual Offences Act provides that: “A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.” 20. In mitigation, the Appellant told the trial Court that he was a young man and a single parent. He prayed for a non-custodial sentence. The trial Court noted the mandatory nature of the sentence imposed by law before handing the Appellant herein a life imprisonment. 21. While the Court has taken note of these personal circumstances, they do not diminish the gravity of the offence nor provide a lawful basis for departure from the sentence prescribed by statute. 22. In *Republic v Mwangi; Initiative for Strategic Litigations in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR), the Supreme Court JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 4 had this to say on the constitutionality of mandatory and minimum sentences: “[16] Although sentencing was an exercise of judicial discretion, it was Parliament and not the Judiciary that set the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in a Statute must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature could not be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence was set in the Statute, the Legislature had already determined the course, unless it was declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law. However, in the special circumstances of a declaration of unconstitutionality, the process was reversed” 23. Accordingly, pursuant to the provisions of Section 8 (2) of the Sexual Offences Act, the sentence of life imprisonment imposed by the trial Court was lawful. 24. Accordingly, the appeal on sentence fails. The sentence of life imprisonment is hereby upheld. Dated and signed at Nairobi this 10th Day of August, 2026. PATRICIA GICHOH JUDGE Delivered at Nakuru this 3rd Day of September, 2026. JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 5 DR. JOSEPH SERGON JUDGE JUDGMENT NAKURU HIGH COURT CR. APPEAL NO. E039 OF 2021 Page 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/13295>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/jackson-wainaina-v-republic-2026>

Prepared on 29 October 2026 · Esheria