

KENYA / JUDGMENT

JM v Republic [2026] KEHC 13136 (KLR)

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COURT

High Court

BEFORE

PK Rotich

CASE / FILE NUMBER

Criminal Appeal E057 of 2024

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JM v Republic (Criminal Appeal E057 of 2024) [2026] KEHC 13136 (KLR) (30 July 2026) (Judgment)

Neutral citation:

[2026] KEHC 13136 (KLR) Republic of Kenya In the High Court at Eldoret Criminal Appeal E057 of 2024 PK Rotich, J July 30, 2026 Between JM Appellant and Republic Respondent (Being an appeal against both the sentence and conviction of Hon. B. Kiptoo (PM) delivered on 3/10/2024 in Eldoret Criminal CM Criminal Case No. SO E032 of 2023)

Judgment

1. The appellant was charged with Stupefying contrary to section 27 (1) as read with Section 27(3) of the Sexual Offences Act . The particulars of the offence are that on diverse dates between 13th March, 2020 and 2nd August, 2020 at Huruma Estate in Turbo Sub- County within Uasin Gishu County the accused administered an alcoholic substance to CM a child aged 12 years with the intention of having the child defiled by EM. 2. In the alternative, the appellant was charged with Induced Indecent Act contrary to section 6(4) of the Sexual Offences Act No. 3 of 2006. The particulars of the alternative count are that on diverse dates between the 13th March 2020 and 2nd August, 2020 at Huruma Estate in Turbo Sub- County within Uasin Gishu County, the accused intentionally compelled CM a child aged 12 years to engage in sexual intercourse with EM. 3. The trial court considered the evidence of 3 prosecution witnesses and 2 defence witnesses and found the appellant guilty of the offence of stupefying contrary to Section 27(1) as read with Section 27(3) of the Sexual Offences Act . Upon conviction, the trial court sentenced the appellant to serve ten (10) years imprisonment. 4. Being dissatisfied with the conviction and sentence by the trial court the accused preferred this appeal. The appeal is based on 5 grounds of appeal which can be summarised as follows: a. That the learned trial magistrate erred in law and fact in convicting the appellant based on evidence which did not meet the required standard of proof. b. That the learned trial magistrate erred in law and fact by relying on extraneous evidence. 5. PW1, the complainant gave unsworn evidence. She stated she hails from [particulars withheld] and that she was in class 7. Before she went to the pastoral centre,

PW1 stated, she lived with her grandmother Joyce (Appellant) and her father Edwin. PW1, further, stated her father is now in prison because he did tabia mbaya to her in the presence of her grandmother. 6. PW1, further, stated that her grandmother gave her alcohol at night which was colourless and bitter. She would beat her to force her to drink it. Whenever she took alcohol, PW1 stated, she could go to sleep but in the morning find herself on her father's bed and realize tabia mbaya (bad manners) had been done on her. 7. PW2, SNN, stated she knows the appellant and that she sells changaa. PW2, further, stated she got concerned that the complainant failed to go to school when she was aged 8 years and the appellant told PW2 her mother abandoned her. 8. PW2, further, stated that the minor developed a habit of sleeping outside their house. One night, PW2 took her back to her grandmother (appellant) who stated that the child should be left into the father's house but the child was reluctant. 9. PW2, further, stated the landlord called the village elder and she called their church Father who called the area Chief and the Assistant Chief who took the child away. 10. In her defence, the appellant stated she took care of the complainant since she was 10 months old and does not know why she was arrested. 11. On cross-examination, DW1 admitted that she used to sell changaa. She, however, stated that the complainant never took alcohol and that she lived in their house with her father. She also stated the complainant slept on the seat while her son (her father) slept on the bed. 12. DW2, EM, stated he is currently serving a prison sentence at Kamiti. He stated the charges against the appellant were not true. 13. DW2, further, stated the complainant was rude and ran to Mama Wamboi's place. DW 2, also stated that the complainant promised to punish him. 14. On cross-examination, DW2 stated that he lived with his mother (DW1) briefly when she was sick. DW2 also stated that his mother washed clothes for people and has never sold alcohol. He also stated the complainant slept on the seat in their house but used to run to the neighbour's house because the appellant worked for people. 15. On re-examination, he stated Mama Wamboi forced the child to lie against him. He also stated the appellant did not give the child any alcohol. 1. The issue for determination is whether the appellant stupefied the complainant. This being 1 st appeal, this court has jurisdiction to revisit the evidence tendered in the lower court afresh, evaluate the same and come to own conclusion, bearing in mind that the lower court had the advantage of observing the demeanour of witnesses and give due allowance to that. (see. Mark Oiruri Mose -vs- Republic (2013) eKLR) 16. PW1 stated she schools at [Name withheld]. Previously, she lived with the appellant who is her grandmother and her father, DW2 is now in prison because he did tabia mbaya to her. PW1, further, stated that the appellant gave her alcohol at night, which was colourless and bitter and would force her to drink it. When she drank the alcohol, PW1 stated, she went to sleep but found herself on her father's bed in the morning and tabia mbaya had been done to her. 17. PW2, stated, that she knows the appellant and that she sells changaa. In her evidence the appellant confirmed she sold changaa though she stated the complainant has never took. 18. DW2, her son who is serving a prison sentence at Kamiti for incest stated never sold alcohol but washed clothes for people. 19. It is my finding that the evidence of PW1 was consistent and cogent whereas that of the appellant and witness was contradictory and not credible. It is common knowledge that changaa is colourless and the appellant admitted she sold it. It is

also not in dispute that DW2 is serving a sentence for committing incest against the complainant. 20. It is my finding that the trial court conviction of the evidence was based on concrete evidence and that the prosecution proved its case against the appellant 21. The section attracts a conviction of not less than 10 years. The upshot of my findings above is that the appeal lacks merit and the same is dismissed. DATED, SIGNED AND VIRTUALLY DELIVERED VIA MS. TEAMS THIS 30 TH DAY OF JULY 2026. HON. P. K. ROTICH JUDGE In the presence of: Appellant in person Ms.Kirenge for DPP C/A Kipchirchir

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