



REPUBLIC OF KENYA



**Korir alias Hila v Republic (Criminal Appeal E005 of 2024)  
[2025] KEHC 2096 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E005 OF 2024  
JR KARANJA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**HILLARY KORIR ALIAS HILA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment sentence and conviction handed down by Hon. E.W. Karani [SRM] dated, delivered and passed on 14th December 2023 in Kericho Chief Magistrate's Court Criminal Sexual Offence No. E024 of 2023 [Republic vs. Hillary Korir alias Hila])*

**JUDGMENT**

1. The Appellant, Hillary Korir alias Hila , was charged before the Senior Resident Magistrate at Kericho with defilement, Contrary to Section 8[1] as read with Section 8[4] of the Sexual Offences Acts.  
It was alleged that on the 9<sup>th</sup> April 2023 in [Particulars Withheld], Kericho County, the Appellant intentionally and unlawful caused his penis to penetrate the vagina of S.J, a child aged seventeen years. In the alternative, the Appellant intentionally and unlawfully caused his penis to come into contact with the vagina of the said child, Contrary to Section 11[1] of the Sexual Offences Act.
2. There was a second count of misusing position of authority, Contrary to Section 24[4] of the Sexual Offences Act in that on the 9<sup>th</sup> April 2023, in [Particulars Withheld], Kericho County, being a teacher at [Particulars Withheld] High School, the Appellant unlawfully took advantage of his position as a teacher and induced a pupil, namely S.J. to have sexual intercourse with him.
3. After pleading not guilty to all the counts, the Appellant was convicted on the main count of defilement and sentenced to eight [8] years imprisonment. He was seemingly acquitted of the second count.



Being dissatisfied with the conviction and sentence, the Appellant preferred this appeal on the basis of the nineteen [19] grounds set out in the petition of appeal dated the 13<sup>th</sup> February 2024.

4. The hearing of the appeal was by way of written submissions with brief oral high lights from Learned Counsel for the Appellant, Mr. Kipngeno.

The State/Respondent opposed the appeal and was represented at the hearing by the Learned Prosecution Counsel, Mr. Masisa.

5. Having considered the appeal on the basis of the supporting grounds and those in opposition thereto in the light of the rival submissions, the duty of this court was to revisit the evidence and draw its own conclusion bearing in mind that the trial court had the benefit of seeing and hearing the witnesses [See, *Okeno Vs. Republic* [1972]E.A. 32].
6. In that regard, the evidence adduced against the Appellant through the nine [9] prosecution witnesses was considered against that of the Appellant and his defence witness [DW1] and what emerged as the basic issue for determination was whether the offence of defilement was committed against the Complainant [PW1] and if so, whether the Appellant was positively identified as the Offender.
7. The legal definition of defilement is contained in Section 8[1] of the *Sexual Offences Act* which states that: -

“ a person who commits on act which causes penetration with a child is guilty of an offence termed defilement”.

Penetration means the partial or complete insertion of the genital organ of a person into the genital organ of another person [See, Section 2 of the *Sexual Offences Act*], and “child” means any human being under the age of eighteen [18] years [See Section 2 of the *Children Act*].

8. The prosecution was required to prove that the act of penetration was committed against the Complainant [PW1] and that as at the time of the act she was a person under the age of eighteen [18] years.

The vital ingredients of the offence of defilement are two fold i.e. penetration and the age of the victim. A third element of the offence is the identity of the Offender.

9. In this case, as regards penetration, there was sufficient and credible evidence from the prosecution establishing that the offence of defilement was indeed committed against the Complainant. This came from the Complainant’s own testimony in which she narrated the circumstances which led to her female genital organ being penetrated by a male genital organ. Her evidence was found to be credible by the trial court and was corroborated by the medical evidence provided by the medical officer, Dr. Irene Simiyu [PW8], who compiled and signed the necessary medical report [P3 form – PEX. 2].

Indeed, the element of penetration was never disputed by the defence.

10. As regards, the element of age, the prosecution led evidence through the Complainant [PW1] and her mother, ECS [PW2], indicating that the Complainant was a minor aged seventeen [17] years as at the material time of the offence.

The Complainant stated that she was born on 1<sup>st</sup> May 2005 and this was confirmed by her mother [PW2] who produced the necessary birth certificate [P EX1] to prove as much.

The offence occurred on 9<sup>th</sup> April 2023 which placed the Complainant shy of eighteen years by one month or thereabout, thereby placing her in the category of being a child.



11. The birth certificate [P EX1] was issued on 18<sup>th</sup> February 2009 and there being no evidence to prove that it was invalid or that it was obtained fraudulently its credibility was never in doubt, thereby offering sufficient and reliable evidence that the Complainant was below the age of eighteen [18] years at the material time of the offence. It did not matter that she was one month or a few weeks shy of turning eighteen [18].  
She was still a minor when she was sexually assaulted.
12. The birth certificate indicates that the date of registration of birth was 29<sup>th</sup> April 2005, but this could only have been an error or accidental slip on the part of the registrar as it cannot be possible that the birth of the Complainant was registered before she was actually born on 1<sup>st</sup> May 2005, which is the official date of her birth. Such error which was clearly typographical was incapable of disproving the credibility and reliability of the birth certificate [P. EX 1] which proved that the Complainant was seventeen [17] years of age at the material time of the offence.
13. Where a valid birth certificate is availed, it takes precedence over any age assessment report that may be tendered in court. In any event, age assessment is only carried out where the birth certificate is non-existent to prove the age of a person or that the existing birth certificate is a product of fraud which is not the case herein.
14. The defence produced an age assessment report [D EX1] which approximated the age of the Complainant to be eighteen [18] years as at the time of the assessment on 28<sup>th</sup> April 2023, a few days before she attained the age of eighteen. It was indicated that the assessment was necessary as the birth certificate was not available at the time even though the P3 form [P EX1] indicated that the Complainant was aged seventeen [17] years when she was examined on 21<sup>st</sup> April 2023.
15. Be that as it may, the age assessment report was inferior to the birth certificate with regard to the Complainant's age and was incapable of extinguishing the Complainant's date of birth as reflected in the birth certificate which clearly provided cogent documentary evidence proving that the Complainant was indeed a minor at the time of the offence.
16. The finding by the trial court that the ingredients of penetration and age were fully established and proved by the prosecution was both factually and legally correct.  
As to the identification of the offender, there was no much or any disputed at all that it was the Appellant who sexually offended the Complainant. He was not a stranger to her. They enjoyed a teacher/student relationship, but it would appear that the Appellant took advantage of that when she approached him for a personal favour.
17. There was nothing concrete to suggest or even raise suspicion that the Appellant was maliciously implicated by the Complainant. Any suggestion to that effect was nothing short of an afterthought.  
The proof that the Appellant was the actual offender meant that the offence of defilement was fully established and proved against him. Therefore, his conviction by the trial court was sound and proper and is hereby affirmed.
18. As regards, the sentence of eight [8] years imprisonment, the Appellant was mistaken to think or even imagine that it was manifestly excessive, yet it was far below the prescribed sentence of not less than fifteen [15] years imprisonment in terms of Section 8[4] of the *Sexual Offences Act* and for which the trial court had no discretion given its mandatory nature. It would however, appear that the trial court imposed the impugned sentence on the basis of the jurisprudence existing at the time that mandatory minimum sentences were unconstitutional in so far as they interfered with the courts discretion in sentencing.



19. In the circumstances and taking into consideration the pre-sentence report which was submitted to the trial court it would only be fair and just that this court declines to interfere with the sentence imposed by the trial court by enhancing it upwards.

In sum, this appeal is wanting on merit and is hereby dismissed in its entirety.

**DELIVERED AND DATED THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025**

**HON. J. R. KARANJAH,**

**JUDGE**

