



**Lokol v Republic (Criminal Appeal E010 of 2024)
[2025] KEHC 3436 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL APPEAL E010 OF 2024
RN NYAKUNDI, J
MARCH 21, 2025**

BETWEEN

MARKSON LOKOL APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal against both conviction and sentence of the Hon. D. Orimba SPM delivered at Lodwar on 15th January 2024 in Lodwar Senior Principal Magistrates Court Sexual Offences No. 16 of 2020)

JUDGMENT

1. The Appellant herein, Markson Lokol was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences *Act No. 3 of 2006*. The particulars were that on diverse dates between 2018 and 2020 at [particulars withheld] Village in Turkana East sub County within Turkana County intentionally caused his penis to penetrate the vagina of C.N. a child aged 16 years.
2. In the alternative, Appellant was charged with the offence of indecent act with a child contrary to section 11(1) of the *Sexual Offences Act* No 3 of 2006 herein referred to as Sexual Offence Act.
3. The Appellant was tried and in the judgment delivered on 15th January 2024, the trial court found the Appellant guilty of the offence of Defilement as charged. After considering the Appellant's mitigation, the court proceeded to sentence him to serve 7 years' imprisonment.
4. Being aggrieved by both his conviction and sentence, the Appellant filed the present appeal. Vide the Appellant's Petition of Appeal dated 27th March 2024, the Appellant set out some 14 grounds of appeal, which can be summarized as follows:



- a. The Learned Trial Magistrate erred in fact and Law by ignoring or not weighing sufficiently and not judiciously appreciating the inconsistent and contradictory evidence of the Complainant who told numerous untruths, was cunningly unreliable and evasive, forgetful and contradictory on material aspects of the case including the Complainant's own admission that she was not pregnant for the Appellant and that she was used to "fix" the Appellant person upon being beaten by her father.
- b. The Learned Trial Magistrate proceeded to find me guilty of the offence charged despite the fact that the key ingredient of "penetration" had not been sufficiently proven as required.
- c. The Learned Trial Magistrate failed to consider crucial evidence regarding the administration of a traditional concoction to the alleged victim, resulting in an abortion. This evidence, confirmed by prosecution Witnesses, significantly altered by the dynamics of the case and should have been given due weight.
- d. The Learned Trial Magistrate proceeded to make incorrect conclusions in regard to a non-existent pregnancy and a non-existent abortion allegedly engineered by the Appellant to the alleged victim. While one prosecution Witness expressly stated during the trial that she administered a traditional concoction because of which, the alleged victim aborted, the Learned Magistrate ignored this crucial part of the case and proceeded to rely on the fabricated narrative that the abortion was occasioned because of some medicine the Appellant allegedly instructed the alleged victim to apply on her private parts and to ingest. It is noteworthy that the administration of the traditional concoction is peculiarly not mentioned anywhere in the 8-page Judgement by the Learned Trial Magistrate.
- e. The Learned Trial Magistrate erred in law by stating in a section of his judgement as follows: "The Accused and his witnesses never defended themselves against the ingredient of penetration. This dispenses with the second ingredient as adequately proven."
- f. The Complainant's testimony was unreliable and contradictory on significant aspects of the case, including her admission that she was not in a sexual relationship with the Appellant and hence fabricated the accusation against the Appellant, after being tortured to change the narrative.
- g. That the Learned Trial Magistrate erred in law and fact by failing to explain to the Appellant in a language that he understood about his rights to legal representation.
- h. That the Learned Trial Magistrate erred in law by proceeding to convict me despite the credibility of the alleged victim being in serious question and without satisfying himself of the coercive methods used to obtain a confession from the alleged victim that she was defiled.
- i. The Learned Trial Magistrate erred in law by failing to explain to the Appellant clearly in a language, he understands that he is entitled by law to appeal the decision of the Court within 14 days if he is dissatisfied as stated in the Judgement of the Court meaning that there was a disconnect between what the court had decided and what the Appellant had understood had been decided.
- j. The Trial Magistrate erred in admitting and relying upon improperly obtained evidence, namely the confession allegedly coerced from the alleged victim. Despite clear indications of coercion and lack of voluntariness, the magistrate admitted this evidence, violating the Appellant's rights to a fair trial and due process.



- k. That the Learned Trial Magistrate erred in law and fact by sentencing the Appellant to seven years without taking into considerations the circumstances of the case, the inconsistencies in the victim’s testimony, the wholesomeness of the case and the fact that the Appellant was unrepresented by Learned Counsel.
 - l. That the Learned Trial Magistrate failed to take into consideration the undisputed fact that the Investigation Officer who handled the matter was not called to testify and instead another officer who was a foreigner to the matter before the court was called to testify so as to “tick the box.”
 - m. The Learned Trial Magistrate failed to conduct a thorough and impartial examination of the evidence presented, thereby depriving the Appellant of a fair trial. The Learned Trial Magistrate exhibited open bias and prejudice against the Appellant, leading to an unfair and unjust conviction.
 - n. That the evidence adduced before the lower court was not sufficient to warrant a conviction.
5. The Appellant prayed that:
- a. This Appeal be allowed.
 - b. That the conviction by the Learned Trial Magistrate, Hon. D. Orimba SPM be quashed, and the sentence be set aside.
6. Parties disposed of the appeal by written submissions.

Appellant’s Written Submissions

7. The Appellant filed his submissions dated 29th April 2024 in which he listed issues for determination which can be summarized as follow;
- a. Why the determination of the lower court should be set aside on grounds that the Learned Trial Magistrate erred in fact and law by ignoring or not weighing sufficiently and not judiciously appreciating the inconsistent and contradictory evidence of the Complainant.**
8. The Appellant submitted that the Trial Magistrate erred by failing to adequately weigh the contradictory and inconsistent evidence provided by the Complainant. His learned counsel stated that the Complainant’s admission that she fabricated the accusation against the Appellant should have raised serious doubts about the reliability of her testimony and that the Trial Magistrate’s failure to scrutinize the credibility of the alleged victim and the methods used to obtain her confession is a grave legal error.
9. Learned counsel further stated that coercive methods employed to extract a confession undermine the voluntariness of such statements and render them inadmissible as evidence and the lower court ought to have proceeded with an abundance of caution. He made reference to the case of OKK v Republic [2020] (eKLR) which is in pari materia with the case currently before this Honourable Court. In that case, the court emphasized the duty of the trial court to consider all relevant evidence, in assessing the credibility of witness testimony.
10. Further, the Appellant submitted that the Complainant’s testimony was riddled with inconsistencies and unreliability, including admissions of fabrication under coercion. This should have raised serious doubts about the credibility of her assertions. The Appellant also submitted that the Learned Trial



Magistrate erred in fact and law by failing to properly assess and weigh the evidence presented, particularly that of the Complainant.

b. Why the determination of the lower court should be set aside because the Learned Trial Magistrate proceeded to find the Appellant guilty of the offence charged even though the key ingredient of "Penetration." had not been sufficiently proven as required.

11. Learned Counsel for the Appellant submitted that the conviction was based on the charge of defilement, which requires proof of penetration and that the accused person contends that the Prosecution failed to discharge this burden and therefore no proof of penetration has been presented. Further, he stated that the medical evidence presented before the court is horribly inconclusive and the critical element of penetration has therefore not been established with sufficient certainty. For instance, the learned counsel noted that the Medical Examination Report produced as Exhibit in court indicates as follows:
 - 1) State of clothing including presence of tears, stains (wet or dry) blood, etc
-No tears nor stains seen
 - 2)General medical history (including details relevant to offence)
-Eloped with a person known to him on 02/04/2020
12. The Appellant Counsel moreover submitted that the said medical report which is at the epicenter of a criminal charge of defilement was hurriedly filled and there was no scientific determination of the injuries sustained by the alleged victim hence the loopholes evident in the medical report. Further, he stated that the discharge of foul smell from the external vagina of the alleged victim as indicated in the medical report is a normal occurrence and does not suggest any injuries. He made reference to the case of *John Mutua Muyold v R* [2017] eKLR.
13. On this issue, it was the learned counsel's final submission that with this crucial element of penetration not sufficiently and scientifically proven, the conviction is rendered unjustified and that the failure to establish this essential element of the offence of defilement undermines the validity of the conviction.

c. Why the determination of the lower court should be set, aside on grounds that the Learned Trial Magistrate proceeded to make incorrect conclusions in regard to a non-existent pregnancy and a non-existent abortion allegedly engineered by the Appellant to the alleged victim

14. Counsel submitted that the trial Magistrate made erroneous conclusions regarding the alleged pregnancy and abortion, ignoring evidence of a traditional concoction being administered, which was pivotal to the abortion. He also stated that the Trial Magistrate's reliance on a fabricated narrative regarding the alleged abortion, without considering the evidence of the traditional concoction administered to the victim, demonstrates a serious miscarriage of justice. He further submitted that, the failure to mention this crucial aspect in the Judgment further highlights the inadequacy of the trial proceedings and is a confirmation that the trial court did not attach any evidentiary weight to this serious assertion which fundamentally altered the dynamics of the case. He made reference to the case of *OKK v REPUBLIC* [2020]

d. Why the determination of the lower court should be set aside on grounds that the Learned Trial Magistrate failed to consider that the Complainant's testimony was unreliable and



contradictory on significant aspects of the case, including her admission that she was not in a sexual relationship with the Appellant:

15. The Appellant's Counsel opined that despite serious questions about the credibility of the alleged victim and the methods used to obtain her confession, the Trial Magistrate proceeded to convict the Appellant, demonstrating a failure to ensure a fair trial. Moreover, he opined that any mention by the alleged victim that she was not in a sexual relationship with the Appellant ought to have aroused some doubts in the mind of the court in regard to the culpability of the Appellant. He relied on the case of *Jenctons v HMA* [2011] HC.JAC SCL 927

e. Why the determination of the lower court should be set aside on grounds that the Learned Trial Magistrate erred in law and fact by failing to explain to the Appellant in a language that he understood about his rights to legal representation.

16. The Appellant Counsel asserted that the failure to explain the rights to legal representation in a language understood by the Appellant constitutes a violation of procedural fairness. He stated that the right to legal representation is fundamental to a fair trial, and its denial undermines the integrity of the proceedings and leads to unjust conclusions such as was witnessed in this case.
17. Counsel further submitted that the learned counsel often brings specialized knowledge and experience to the case which can be essential in understanding and interpreting the law and evidence. Their absence may result in the accused being disadvantaged in presenting their case or understanding the legal implications of the proceedings.
18. The Appellant's Counsel also submitted that failure by the trial court to have provided the Appellant with clear and comprehensive explanations of his right to legal representation made him encounter avoidable legal difficulties as he was interacting with the criminal justice system for the first time. He stated that in the Kenyan Legal system, the right to legal representation is considered fundamental to the principles of due process and the right to a fair trial and when this right is denied or inadequately provided, it underlines the integrity of the legal process and raises concerns about the fairness of the trial outcome.

f. Why the determination of the lower court should be set aside on grounds that the Learned Trial Magistrate erred in law by proceeding to convict the Appellant despite the credibility of the alleged victim being in serious question and without satisfying himself of the coercive methods used to obtain a confession from the alleged victim that she was defiled.

19. The Learned Counsel further submitted that the credibility of the alleged victim is a crucial factor in any criminal case, particularly in cases of defilement where the testimony of the victim often serves as a primary piece of evidence. He opined that if there are substantial doubts regarding the credibility of the alleged victim, it raises questions about the reliability of the entire case.
20. Counsel furthermore submitted that, the coercive methods used to obtain a confession seriously compromised the integrity of the legal process and the reliability as well as voluntariness of the evidence. He stated that it's imperative for the court to thoroughly investigate and establish whether any coercion or undue influence was exerted on the alleged victim to allege defilement and failure to do so undermines the fairness of the trial and casts doubt on the validity of the conviction.

g. Why the determination of the lower court should be set aside on grounds that the learned trial magistrate erred in law by failing to explain to the Appellant clearly and in a language, he



understands that he is entitled by law to appeal the decision of the court within 14 days if he was dissatisfied with the Judgment of the Court

21. The Appellant's Counsel submitted that the determination of the lower court should be set aside due to the learned trial magistrate's error in failing to clearly explain to the Appellant, in a language he understands, his legal right to appeal the court's decision within 14 days if he was dissatisfied, despite this being captured in the records of the Court. He stated that the clear communication of legal rights is fundamental to ensuring fair and just legal proceedings and failing to adequately inform the Appellant of his right to appeal within the specified timeframe deprived him of the opportunity to exercise his legal recourse effectively.
22. Counsel further submitted that ensuring that accused persons are fully aware of their legal rights, including the right to appeal, is essential for upholding the principles of justice and fairness. It was his submission that the failure to provide this crucial information represents a serious legal error on the part of the trial magistrate and constitutes grounds for setting aside the determination of the lower court.

h. Why the determination of the lower court should be set aside on grounds that the trial magistrate erred in admitting and relying upon improperly obtained evidence, namely the confession allegedly coerced from the prosecution witness (PW I).

23. Counsel stated that the Appellant contends that evidence obtained through coercion or duress violates the principles of fairness and justice and coerced confessions are inherently unreliable and can lead to miscarriages of justice. He stated that the admission of such evidence undermines the integrity of the legal process and violates the rights of the accused. He further stated that it is demonstrated that the confession from PW I was coerced or improperly obtained, it should not have been admitted as evidence and relying on such evidence to convict the Appellant was a grave error on the part of the trial magistrate.
24. The Appellant's Counsel furthermore submitted that by admitting and relying upon improperly obtained evidence, the trial magistrate failed to uphold the standards of fairness and impartiality essential to a just legal system.

i. Why the determination of the lower court should be set aside on grounds that the Learned Trial Magistrate failed to take into consideration the undisputed fact that the Investigation Officer who handled the matter was not called to testify and instead another officer who was a foreigner to the matter before court was called to testify to "tick the box".

25. The Appellant's Counsel noted that the officer who testified in this matter, Mr. George Odhiambo is a Police Constable stationed at Kainuk Police Station in Turkana South Sub County and the matter in question happened at Lokwii Village in Lokori in Turkana East Sub County, more than one hundred kilometres apart. He made reference to the witness and stated that he testified as follows during trial:

"I am currently at Kainuk Police Station. I am in the investigating officer, in the case The case was initially investigated by my colleague PC Karamba. He is currently on sick leave. PC Karumba handed to PC Ruta who again was transferred. "

26. Counsel opined that the said witness was not the Investigating Officer in the matter and the information he gave to the court on oath during trial is therefore incorrect. He further opined that the officer was only part of a team of police officers that were mobilized to arrest the Appellant and after arrest, he had nothing else to do with the case and could not have been of any help to the court.



27. The Appellant's Counsel submitted that the testimony of the Investigation Officer who handled the case is often critical in criminal proceedings and this officer possesses firsthand knowledge of the investigation; including the collection of evidence, witness interviews, and other pertinent aspects of the case. He also stated that failing to call this crucial witness to testify deprives the court of essential information necessary for a fair and thorough evaluation of the evidence. He relied on the legal proposition as considered in *Bukenya & Others v Uganda* [1972] EA 549.

j. Why the determination of the lower court should be set aside on grounds that the trial magistrate failed to conduct a thorough and impartial examination of the evidence presented.

28. The Counsel for the Appellant submitted that a fundamental aspect of judicial proceedings is the impartial evaluation of evidence presented by both the prosecution and the defense and the trial magistrate has the responsibility to carefully assess the evidence, weigh its credibility, and make reasoned decisions based on the facts presented in court.

29. It was the Counsel's proposition that the Appellant has demonstrated that the trial magistrate did not conduct a thorough examination of the evidence and exhibited bias in his assessment, and subsequently undermined the fairness of the trial and compromised the integrity of the judicial process as a fair arbiter. He further stated that every piece of evidence should be subjected to scrutiny, with any inconsistencies or uncertainties addressed adequately.

30. The Learned Counsel submitted that, if there are legitimate concerns such as these that the trial magistrate did not fulfill their duty to conduct a thorough and impartial examination of the evidence it constitutes grounds for setting aside the determination of the lower court and this allows for a review of the case by a higher court to ensure that justice is served.

k. Why the determination of the lower court should be set aside on grounds that the evidence adduced before the lower court was not sufficient to warrant a conviction.

31. The Learned Counsel submitted on this issue that the evidence presented before the lower court was not sufficient to warrant a conviction, as key elements of the alleged offences were not adequately proven. He made reliance to the case of *Joseph Mbithi Mwaula & Another v Republic* [1980] eKLR

Analysis and Determination

32. The appellant has cited 14 grounds of appeal which all form one issue, that is, whether the prosecution proved its case beyond any reasonable doubt.

33. This being a first appeal, this court is guided by the principles set out in the case of *David Njuguna Wairimu v Republic* [2010] eKLR where the Court of Appeal stated: -

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided that it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”



34. Similarly, in the case of *Okeno v Republic* [1972] EA 32 where the Court of Appeal set out the duties of the appellate court as follows: -

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v Republic* [1957] EA 336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M. Ruwala v R* [1957] EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post* [1958] EA 424.” This was also set out in the case of *Kiilu & Another v Republic* [2005] KLR 174.

35. It is trite that all criminal offences require proof beyond reasonable doubt. Lord Denning in *Miller v Ministry of Pensions* [1947] 2 All ER, 372 stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

36. Similarly, in *Bakare v State* [1987] 1 NWLR (PT 52) 579, the Supreme Court of Nigeria emphasized on the phrase proof beyond reasonable doubt, stating:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability.”

37. For the charge of defilement to be sustained, the Prosecution bears the burden of establishing three essential elements as stipulated under Section 8(1) of the *Sexual Offences Act* No. 3 of 2006. These elements comprise: verification that the victim is a minor; evidence confirming that penetration occurred; and conclusive identification of the perpetrator.

38. Section 8(1) of the *Sexual Offences Act* provides as follows:

“8.

- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- (2) 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.



- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
- (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
- (5) It is a defence to a charge under this section if -
 - (a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and
 - (b) the accused reasonably believed that the child was over the age of eighteen years.
- (6) The belief referred to in subsection (5) (b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.
- (7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the *Borstal Institutions Act* and the Children's Act."

Age of the Victim

39. The importance of proving age in a Sexual Offence case cannot be gainsaid. In the case of *Kaingu Kasomo v Republic*, Criminal Appeal No. 504 of 2010, the Court of Appeal stated as follows:

“Age of the victim of sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim.”

40. In the present case, it is not in dispute that the victim was a minor aged 16 years at the time of the alleged offence. The victim produced her birth certificate indicating her date of birth as 8th August 2004. Additionally, PW3, the clinical officer who examined the victim, confirmed her age in the medical report. Her age was therefore adequately proven to the required standard.

41. To the second element of penetration, section 2 of the *sexual offences Act* defines “penetration to mean – the partial or complete insertion of the genital of a person into the genital organs of another person.” Under this definition it is clear that the criminal act will involve exposure, of the offender’s genital, contact with the female genital and subsequent penetration. So when the penis reaches the vulva or between the labia majora major of the female genital organ, penetration is said to have occurred.

42. Regarding the element of penetration, the evidence in this case is particularly compelling. The complainant's detailed testimony chronicled multiple sexual encounters with the Appellant over a two-year period, specifically describing how these incidents occurred at the Appellant's residence. Her



pregnancy in November 2019, which she directly attributed to sexual contact with the Appellant, provides strong circumstantial evidence of penetration. This is reinforced by her account of the Appellant providing her with tablets to terminate the pregnancy tablets she was instructed to both ingest and insert vaginally resulting in profuse bleeding. The clinical officer's medical examination, documented in the P3 form, noted findings consistent with sexual activity. Notably, the trial court correctly observed that neither the Appellant nor his witness presented any substantive defense against the element of penetration during trial proceedings. Section 124 of the *Evidence Act* allows courts to convict based solely on a victim's testimony in sexual offense cases when satisfied of its truthfulness, and here, the complainant's account contained specific details that enhanced its credibility. When examined holistically, the prosecution has met its burden of proving this critical element beyond reasonable doubt.

43. The third element is that of identification. In *James Murigu Karumba v Republic* [2016] eKLR, it was held by the Court of Appeal based, on *Suleiman Juma alias Tom v R* [2003] eKLR; [2003] KLR 386 that:

“Lastly, the three identifying witnesses did admit that they knew the appellant prior to the incident. Consequently, this was a case of recognition as opposed to identification of a stranger. Therefore, there was no need for the identification parades and the identification evidence therein was of no probative value.”

44. The element of identification is a critical component in sexual offence cases. Let me consider its application in the present appeal. This case presents a clear instance of recognition rather than identification of a stranger. The complainant and the Appellant had a pre-existing relationship that spanned approximately two years, from 2018 to 2020, with multiple interactions and encounters. The Appellant himself, in his testimony as DW1, acknowledged knowing the complainant from their village, stating he "knew the complainant from the village but he did not have a grudge against them." This admission was further corroborated by his witness, DW2 (the Appellant's father), who confirmed they "know the complainant very well as she comes from the same village." When identification involves familiar parties with established prior contact, courts rightfully apply a different standard of scrutiny compared to cases involving strangers. The recognition evidence in this case is particularly robust, as their relationship evolved over numerous meetings and encounters at specific locations, including the Appellant's residence. The complainant's ability to identify the Appellant was never seriously contested during trial, with the defense instead focusing on denying the sexual acts themselves rather than challenging identity. Consequently, I find that the prosecution adequately established this third element beyond reasonable doubt.
45. Having reevaluated all the evidence adduced at trial, I am satisfied that the prosecution proved all elements of the offense beyond reasonable doubt. The age of the complainant was conclusively established, penetration was adequately proven through the complainant's testimony supported by medical evidence, and the identification of the appellant as the perpetrator was not in question.
46. The trial magistrate properly evaluated the evidence and applied the correct legal principles in finding the appellant guilty. While appellate courts have the authority to reexamine evidence, they should not interfere with factual findings unless they are clearly erroneous or unsupported by evidence. I find no such error in this case.
47. The inconsistencies highlighted by the appellant are minor and do not undermine the core evidence establishing his guilt. The sentence of 7 years' imprisonment is well within the statutory guidelines for the offense and considering all circumstances, it is neither excessive nor inadequate.



48. In light of the foregoing, I make the following orders:

- a. The appeal is dismissed.
- b. The conviction for the offense of defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offenses [Act No. 3 of 2006](#) is upheld.
- c. The sentence of 7 years' imprisonment is affirmed.

DATED AND SIGNED AT LODWAR THIS 21ST DAY OF MARCH, 2025

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R. NYAKUNDI

JUDGE

