



**Mudogo alias Mukata v Republic (Criminal Appeal 1 of 2024)  
[2025] KEHC 2633 (KLR) (Crim) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 1 OF 2024  
KW KIARIE, J  
MARCH 6, 2025**

**BETWEEN**

**JOHN ASENGA MUDOGO ALIAS MUKATA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S. O. Case No. E008 of 2023 of Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa– Senior Principal Magistrate)*

**JUDGMENT**

1. John Asenga Mudogo alias Mukata, the appellant herein, was convicted of the offence of defilement of a girl contrary to section 8 (4) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence were that on an unknown date in November 2022, in Kinangop within Nyandarua County intentionally caused his penis to penetrate the vagina of LWW., a child aged sixteen years.
3. The appellant was sentenced to fifteen years imprisonment. He has appealed against both conviction and sentence. He was in person and raised the following grounds of appeal:
  - a. The prosecution's evidence was contradictory.
  - b. That the learned trial magistrate erred in law and fact by failing to appreciate that the prosecution had been unable to prove its case beyond reasonable doubt.
  - c. That the learned trial magistrate erred in both law and fact by convicting the appellant yet failed to appreciate that DNA test recommended by P W 3 (the doctor), which could have exonerated the appellant.



4. The state opposed the appeal through Odero Vena, prosecution counsel. It was contended that the prosecution proved its case to the required standards and that the appeal lacked merit.
5. This court is an appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses give their testimonies. Therefore, I will follow the well-known case of *Okeno vs Republic* [1972] E. A 32 to guide my decision-making process.
6. Section 8(1) of the *Sexual Offences Act* defines defilement in the following terms:

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

An offence of defilement, therefore, is established against an accused person when the prosecution has proved the following ingredients:

- a. That there was penetration of the complainant's genitalia;
- b. That the accused was the perpetrator and;
- c. The victim must be below eighteen years old.

This position was echoed in the case of *Fappyton Mutuku Ngui vs Republic* [2012] eKLR when Joel Ngugi J. said:

Going by this definition of defilement, I agree with Mr. Mwenda on the issues the court needs to determine. The first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child; and finally, whether the penetration was by the Appellant.

These are the ingredients that the prosecution must prove against an accused person.

7. The copy of the birth certificate produced as an exhibit indicates that LWW. was born on the 31<sup>st</sup> day of December 2007. As of November 2022, she was 14 years and eleven months old. Section 8 (4) of the *Sexual Offences Act* provides:

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.

The correct section ought to have been 8 (3). Since this will disadvantage the appellant, the charge will remain as it is. The complainant's age was proved.

8. LWW (PW1) testified that while returning home at about 7 p.m., the appellant accosted her at a bushy area. Though it was dark, she recognized him. He was their school day watchman. He was armed with a knife. He warned her not to make any noise. He pulled her into a forest and defiled her. He warned her not to inform anybody what transpired, or else he was going to kill her. This is why she did not report to her mother.
9. RWM (PW2) is the complainant's mother. She testified that in March 2023, she noticed that the complainant's behaviour had changed. She lost her appetite and would unusually sleep at odd hours. She became suspicious and sneaked into her daughter's bedroom when she was in school. She discovered unused sanitary pads she had issued her daughter for January and February. When she confronted her, she said that the appellant was the one responsible for her pregnancy. This is when they reported to the police. When the complainant was taken to hospital, she was confirmed to be twenty-six weeks pregnant. Dr. Karanja Newton confirmed this in his evidence.



10. John Asenga Mudogo, also known as Mukata, the appellant, argued that he was falsely implicated after the complainant's mother requested money from him. This allegation was denied and appears to be untrue. During the cross-examination of RWM (PW2), he suggested that she had demanded Kshs. 300,000.00 from him. However, in his defence evidence, he asserted that Kshs. 100,000.00 was sought from him. The learned trial magistrate was, therefore, justified in dismissing his defence.
11. Most sexual offences occur away from potential witnesses. In some cases, the only evidence available is that of the complainant. Although in a case like this, the prosecution should have waited for the child's birth to conduct a DNA examination, this is not a mandatory requirement. However, it is advisable to do so to eliminate any lingering doubts.
12. The proviso to section 124 of the *Evidence Act* states:

Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.
13. There was a basis on which to rely on the complainant's evidence. The conviction was safe. The appeal is dismissed.

**DELIVERED AND SIGNED AT NYANDARUA THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

