



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoki alias Animal v Republic (Criminal Appeal 95 of 2023)  
[2025] KEHC 3648 (KLR) (Crim) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3648 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 95 OF 2023  
KW KIARIE, J  
MARCH 24, 2025**

**BETWEEN**

**CHARLES NYAMU NJOKI ALIAS ANIMAL ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S. O. Case No. E063 of 2022 of Senior Principal Magistrate's Court at Engineer by Hon. Daffline Nyaboke Sure– Senior Resident Magistrate)*

**JUDGMENT**

1. Charles Nyamu Njoki alias Animal, 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 diverse dates between the 2<sup>nd</sup> day of May 2022 and the 18<sup>th</sup> day of June 2022, in Kipipiri sub-county within Nyandarua County, he intentionally caused his penis to penetrate the anus of JNM, a boy aged seventeen 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. That the learned trial Magistrate erred in both law and fact by convicting the appellant but failed to note that the ingredients of the offences were not conclusively proved.
  - b. That the learned trial Magistrate erred in law and fact by convicting the appellant yet failed to find that his defence was cogent and believable.



- c. The learned trial Magistrate erred in both law and fact by failing to appreciate that the prosecution had been unable to establish its case to the required standard, i.e., beyond any reasonable standard.
4. The state opposed the appeal through Serling Joyce, the prosecution counsel. It was argued that the prosecution had proved its case to the required standards and that the appeal was without 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 J.N.M. was born on the 5<sup>th</sup> day of September 2005. As of 2<sup>nd</sup> day of May 2022, she was 16 years and eight 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 complainant's age was proved to the required standards.

8. JNM (PW1) testified that on the 22<sup>nd</sup> day of May 2022, he sought some financial assistance from the appellant. At the time, they were in the appellant's house. The appellant sodomised him. He promised him some money after every episode. He then gave him two laptops, one extension cable, a hard drive and three mice.
9. When his uncle discovered him with the items, he inquired about their origin. He initially refrained from divulging the truth. However, when his uncle and aunt threatened to inform the police, he revealed what had occurred between him and the appellant. This ultimately resulted in his arrest and prosecution. This was the gist of the evidence of the complainant's aunt (PW3).



10. The complainant was recalled, and his testimony was altered. He stated that his uncle and aunt instructed him to implicate the appellant when he was discovered with the laptops. The pair threatened to have him remanded because of the laptops.
11. PW3 was also recalled, and her evidence was changed. In her earlier statement, she claimed that the appellant had initially said he bought the laptop for Kshs.50,000 before implicating the appellant. However, upon her recall, her testimony was that the complainant did not mention 50,000, nor did she inform the police about it.
12. The complainant's evidence and that of his aunt (PW3) present them as witnesses whose credibility is questionable. The Court of Appeal, in the case of *Ndungu Kimanyi vs Republic* [1979] KLR 283 (Madan, Miller and Potter JJA), held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.
13. Although the evidence presented by Dr. Joseph Mburu (PW4) indicated an anal fissure in the healing stage, the contradictions raised by the complainant and his aunt rendered the conviction unsafe. I quash the conviction and set aside the sentence. The appellant is released unless otherwise lawfully detained.

**DELIVERED AND SIGNED AT NYANDARUA THIS 24<sup>TH</sup> DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

