



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Republic (Criminal Appeal 120 of 2023)
[2025] KEHC 3145 (KLR) (Crim) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 120 OF 2023
KW KIARIE, J
MARCH 19, 2025**

BETWEEN

DENNIS KIMANI NGUGI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S. O. Case No. E002 of 2020 of Senior Principal Magistrate's Court at Engineer by Hon. Rawlings Liruma – Resident Magistrate)

JUDGMENT

1. Dennis Kimani Ngugi, 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 the 17th day of May 2020, at Engineer in Kinangop within Nyandarua County intentionally caused his penis to penetrate the vagina of MWM, a child 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 law and facts when she convicted the appellant in a prosecution case where the age of the victim was not proved.
 - b. The learned trial magistrate erred in law and fact when he convicted the appellant in the prosecution case where penetration was not proved.
 - c. That the learned trial magistrate erred in law and fact by applying wrong standards of proof in criminal cases, which was a standard of probability instead of reasonable doubt.



4. The state did not file grounds for opposing the appeal or their submissions.
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 presented as an exhibit indicates that MWM. was born on 1 August 2002. As of 17 May 2020, she was 17 years and eight months old. Contrary to the appellant's contention, the complainant's age was proved.
8. MWM (PW1) testified that the appellant texted her and asked her to meet him. When she went, the appellant took her to his house. There was no seat, and she sat on the bed. This is where the appellant defiled her. She left the room crying and reported to her sister.
9. RW (PW2) is the complainant's sister. She testified that she was informed the complainant would be leaving shortly. After a few minutes, the complainant returned in tears. PW2 was with Eunice Kinyanjui (PW4). They accompanied the complainant to the appellant's house. Both witnesses stated that they found the appellant half-dressed in bed. When PW2 slapped him, he claimed the complainant had gone there of her own accord.
10. During the complainant's medical examination, the P3 form indicated that her hymen was broken, with remnants of recent breaching. This evidence, alongside that of PW2 and PW4, corroborated the complainant's testimony regarding penetration and the identity of the perpetrator.
11. Penetration was proved to the required standards.
12. 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.



13. The upshot of the foregoing analysis of the evidence on record is that the appeal lacks merit. The same is dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 19TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

