



REPUBLIC OF KENYA



**Njova v Republic (Criminal Appeal 107 of 2023)
[2025] KEHC 4161 (KLR) (Crim) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 107 OF 2023
KW KIARIE, J
APRIL 3, 2025**

BETWEEN

SAMUEL MAITHYA NJOVA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. case NO. E071 of 2022 of the Senior Principal Magistrate's Court at Engineer by Hon. E. Wanjala. -Principal Magistrate)

JUDGMENT

1. Samuel Maithya Njova, the appellant in this case, was convicted of the offence of defilement in violation of section 8 (1) read together with section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence are that on the 29th day of July 2022, at [Particulars Withheld], Ol Kalou Township, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of F.W.M., a child aged fourteen years.
3. The appellant was sentenced to twenty years imprisonment. He was aggrieved and filed this appeal against both the sentence and conviction. He was in person. He raised grounds of appeal as follows:
 - a. That the learned trial magistrate erred in law and fact by convicting the appellant but failed to note that the doctor's report does not support the evidence of the complainant that the appellant is said to have defiled.
 - b. The learned trial magistrate erred in law and fact by not putting into consideration that the attempt to have sexual intercourse with the complainant was not proved beyond reasonable doubt.



- c. The age of the complainant was not proved beyond a reasonable doubt.
- d. The identity of the culprit was not proved beyond a reasonable doubt.
4. The state opposed the appeal through Ms. Odero Vena, who argued that the case had been proven to the required standards and that the sentence was proper.
5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of Okeno vs Republic [1972] EA 32.
6. An offence of defilement 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.
7. These are the ingredients the prosecution must prove beyond any reasonable doubt before the trial court.
8. F.W.M. (PW1) testified that she found the appellant inside when she entered their kitchen. He knocked her down and defiled her. Her mother returned and found the appellant hiding behind the kitchen door. This is what T.W.M.(PW2), her mother, testified to. When she attempted to close the door, the appellant overpowered her. The complainant's pants were on the floor.
9. When F.W.M. was examined by Dr Irene Macharia (PW4) on the 4th day of August 2022, she found a hyperaemic vaginal wall with a broken hymen and was mildly bleeding. She had no other injuries on the other parts of her body. She concluded there was penetration.
10. The element of penetration and the perpetrator were proved.
11. The complainant's mother provided evidence suggesting consensual sex. It appears she surprised the duo with her early arrival. If she had indeed been forced to engage in sexual intercourse, this would have brought her relief. She wouldn't have waited for any prompting to inform her mother of what had happened. Generally, this issue would not have mattered had the appellant's age not been raised.
12. Although the prosecution did not provide his age, it is imperative to do so in borderline cases, especially where evidence suggests consensual sex. The defence counsel indicated that the Civil Registrar verified the appellant's age. The pre-sentence report listed his age as 18 at the time of its compilation, dated October 10, 2023. When the appellant's age was assessed on August 18, 2022, it was indicated that he was 18 years old.
13. Having concluded that the sexual intercourse was consensual between the two, I am inclined to intervene in the sentence. I set aside the trial court's sentence and hereby commit the appellant on three years' probation.
14. The appeal is successful to that extent.

DELIVERED AND SIGNED AT NYANDARUA ON THIS 3RD DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

