



**Njoroge v Republic (Criminal Appeal 97 of 2023)  
[2025] KEHC 4149 (KLR) (Crim) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4149 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 97 OF 2023**

**KW KIARIE, J**

**APRIL 1, 2025**

**BETWEEN**

**SAMUEL MWANGI NJOROGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S. O. Case No. 36 of 2020 of Senior Principal Magistrate's Court at Engineer by Hon. R.L. Musiega– Resident Magistrate)*

**JUDGMENT**

1. Samuel Mwangi Njoroge, the appellant herein, was convicted of the offence of defilement of a girl contrary to section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence were that on diverse dates between the 23<sup>rd</sup> day of July 2020 and the 26<sup>th</sup> day of July 2020, in Kipipiri sub-county of Nyandarua County, he intentionally caused his penis to penetrate the vagina of SNL, a child aged fifteen years.
3. The appellant was sentenced to twenty years imprisonment. He has appealed against both conviction and sentence. He was in person and raised the following grounds of appeal:
  - a. The learned trial magistrate erred in law and fact by convicting the appellant but failed to note that the ingredients of the offence were not conclusively proved.
  - b. The learned trial magistrate erred in law and fact by convicting the appellant yet failed to appreciate that there was no proper medical evidence linking the appellant to the commission of the offence.



- c. The learned trial magistrate erred in law and fact by convicting and sentencing the appellant without considering the appellant's mitigation, thus imposing the maximum sentence, which is harsh and excessive and not informed by the unique facts and circumstances of the offence.
4. The state opposed the appeal through Serling Joyce, prosecution counsel. She raised the following grounds of opposition:
- a. The victim's age was sufficiently proved to be 15 years at the time of committing the offence. An age assessment report was produced as an exhibit. The doctor who filed the P3 form also confirmed that the victim was approximately 15 years old.
- b. That the trial court had a chance to hear the case, and when placed on his defence, the court dismissed it.
- c. That the trial court sentenced the appellant to serve twenty (20) years.
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 testify. Therefore, I will follow the well-known case of *Okeno v 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 v 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. In her testimony, the complainant stated that she was 15 years old. The age assessment report, which was produced in court as an exhibit, estimated her age to be 15. Dr. Rotich, who examined the complainant, stated that her age was 15 years. In the case of *Francis Omuroni v Uganda*, Court of Appeal Criminal Appeal No. 2 of 2000. It was held as follows:
- In defilement cases, medical evidence is paramount in determining the age of the victim, and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence, age may also be proved by birth certificate, the victim's parents or guardian, observation, and common sense ...
- In this case, I am satisfied that the prosecution has proven the complainant's age to the required standards.



8. SNL (PW1) is the complainant in this case. Her evidence was that the appellant tricked her into carrying some items to his house. She went with him. Upon arrival, he locked the door and declared she would be his wife. He defiled her. She stayed with the appellant for three days. In the process, she cried aloud due to pain, and some neighbours intervened. They assisted her with a cell phone. She called her father, who arrived with police officers. The appellant ran away. He was chased and apprehended.
9. Dr. Julius Nthenga (PW3) submitted an examination report for Dr. Rotich, who assessed the complainant. Upon examination, the doctor noted a recent breach of the hymen, with tears observed at the 8 and 12 o'clock positions. The report was completed on the 28<sup>th</sup> day of July 2020.
10. Penetration was proved to the required standards.
11. Samuel Mwangi Njoroge, the appellant, was arrested on an allegation of harbouring a schoolgirl, which he denied.
12. The appellant's defence amounted to mere denial and was displaced by the evidence on record. The prosecution proved their case against him to the required standards.
13. Section 8 (3) of the *Sexual Offences Act* provides:

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.
14. An appellate court would only interfere with the trial court's sentence where sufficient circumstances exist that entitle it to vary the court's order. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v Rex* [1950], 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. (*R v Shershewcity* [1912] C.CA 28 T.LR 364).

In the instant case, the circumstances militate against any interference with the sentence.
15. 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 1ST DAY OF APRIL 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

