



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rogisho v Republic (Criminal Appeal 82 of 2023)  
[2025] KEHC 4145 (KLR) (Crim) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 82 OF 2023**

**KW KIARIE, J**

**APRIL 1, 2025**

**BETWEEN**

**PETER KAMAU ROGISHO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. case NO. E069 of 2022 of the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa-Senior Principal Magistrate)*

**JUDGMENT**

1. Peter Kamau Rogisho, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence are that on the 24<sup>th</sup> day of July 2022, in Kipipiri sub-county within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of B.W.W., a child aged five years.
3. The appellant was sentenced to twenty years' imprisonment. He was aggrieved and filed this appeal against conviction and sentence. He was represented by Njihia Njoroge & Company Advocates. He raised grounds of appeal as follows:
  - a. The learned trial magistrate erred in law and fact by shifting the burden of proof from the respondent to the appellant.
  - b. The learned trial magistrate erred in law and, in fact, by imposing a sentence that was manifestly excessive in the circumstances.



- c. The learned trial magistrate erred in law and, in fact, by basing his conviction on the apparent weakness in the appellant's case rather than on proof beyond any reasonable doubt on the part of the respondent.
  - d. The learned trial magistrate erred in law and fact by dismissing the appellant's claim that his wife and her close family members, some of whom testified as the respondent's witnesses.
  - e. The learned trial magistrate erred in law and, in fact, by accepting the evidence of the respondent's witnesses without considering the circumstances under which the alleged offence was committed, which, had he addressed, would have led to the appellant's acquittal.
  - f. The learned trial magistrate erred in law and, in fact, by generally failing to uphold the appellant's defence, which, had it been upheld, would have led to the appellant's acquittal.
  - g. The learned trial magistrate erred in both law and fact by failing to consider the appellant's evidence and the fact that he presented himself at the police station to demonstrate his innocence, which were factors inconsistent with his guilt.
4. The state did not file any grounds contesting the appeal or submissions regarding that matter.
  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] EA 32 to guide my decision-making process.
  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. This position was echoed in the case of *Fappyton Mutuku Ngui v Republic* [2012] eKLR. Therefore, I will endeavour to establish whether the prosecution met the required standards.
  8. A copy of the Certificate of Birth that was produced as prosecution exhibit 4 indicates that she was born on the 14<sup>th</sup> day of October 2017. As of the 24<sup>th</sup> day of July 2022, she was four years and nine months old. The complainant's age was proved for section 8 (2) of the *Sexual Offences Act*. The section provides:
 

A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
  9. B.W.W. (PW1), the complainant, testified that the appellant sent other children to buy a cake. He took her to a shamba and "urinated" on her while lying on top of her. She said he put his part that urinates into her part that urinates. She felt pain.
  10. The complainant was taken to Manunga Health Centre. Dr. Joseph Mburu (PW4) examined her. His findings were fresh reddening of both left and right labia minora. The hymen was intact. There was a mild, fresh laceration at the right lower labia minora. According to the findings, he concluded that there was defilement.



11. HWK (PW5) and her daughter JJW (PW3) were heading home when they witnessed an unfathomable incident. Initially, they assumed that two adults were engaging in sexual activity in public, only to realise that one was a child. Perhaps moved by a mother's instinct, they rushed to the young girl's rescue. At that moment, they recognised that the perpetrator was someone they knew. They quickly took the child to the hospital before referring the matter to the police.
12. Peter Kamau Rogisho, the appellant, denied involvement in the offence. He called his wife, Ann Wanjiku (DW2), who introduced a claim related to a long-standing grudge over a land dispute. HWK (PW5) and JJW (PW3), described as the instigator's wife and daughter, were not confronted with these critical facts. This claim is an afterthought.
13. The analysis of the evidence on record shows that the appellant's conviction was based on watertight evidence. He was caught with his hand in the cookie jar.
14. Section 8(2) of the *Sexual Offences Act* provides mandatory life imprisonment. However, a life sentence has been deemed unconstitutional. The common practice is to impose a 30-year prison term instead of the mandated life sentence.
15. 5. The ODPP did not serve the appellant with a notice for enhancement. Had this been done, I would not have hesitated. Consequently, I cannot impose the prescribed sentence, as it would be prejudicial.
16. The conclusion drawn from the analysis of the evidence on record is that the appeal lacks merit and is therefore dismissed.

**DELIVERED AND SIGNED AT NYANDARUA THIS 1<sup>ST</sup> DAY OF APRIL 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

