



REPUBLIC OF KENYA



**Kimani v Republic (Criminal Appeal 50 of 2023)  
[2025] KEHC 6831 (KLR) (Crim) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL 50 OF 2023**

**KW KIARIE, J**

**MAY 21, 2025**

**BETWEEN**

**STEPHEN MUGO KIMANI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No.108 of 2020 of the Chief Magistrate's Court at Nyahururu by Hon. Charles Obulutsa, Chief Magistrate)*

**JUDGMENT**

1. Stephen Mugo Kimani, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* No.3 of 2006.
2. The particulars of the offence were that on the 15<sup>th</sup> day of June 2020, at [Particulars Withheld] village, within Nyandarua County, intentionally and unlawfully caused his penis to penetrate the vagina of GNG, a child aged seventeen years.
3. The appellant was sentenced to fifteen years' imprisonment and has appealed against both his conviction and sentence. He raised the following grounds of appeal:
  - a. The ingredients of the offence were not proved.
  - b. The appellant's defence was not considered.
  - c. The trial was not fair.
  - d. The fifteen (15) years' imprisonment sentence was excessive.
4. The state did not file any grounds for opposition or submissions.



5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs the Republic* [1972] EA 32.
6. To establish an offence of defilement against an accused person, the prosecution has to prove 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. Ngugi J. (as he was then) said:

Going by this definition of defilement... the issues the court needs to determine...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.

Therefore, I will endeavour to establish whether the prosecution met the required standards.

7. The complainant, G.N.G. (PW1), testified that she was seventeen at the time of the alleged offence. A copy of her Certificate of Birth was produced. It is indicated therein that she was born on the 14<sup>th</sup> day of January 2003. As of the 15<sup>th</sup> day of June 2020, she was 17 years and six months old. I find that her age, for Section 8(4) of the *Sexual Offences Act*, was proved.

1. The complainant testified that the appellant had sex with her without her consent. This is what she testified:

On 15/6/2020, the accused invited me to his house in the morning. When I went, he forced me into his bedroom. He said he wanted to have sex with me. I had known him since April. We had talked briefly. He had sex with me against my will. I did not tell anyone. I found my mother. He invited me on the same day again to help him wash dishes. I went and did so.

We had sex with him against my will. I went home and told no one. My mother was suspicious when I returned, as I had told her I was taking a book.

When she questioned me, I told her about Mugo. She questioned him. She did a pregnancy test, which showed positive. The accused was said to come after a week when he failed to do so.

9. SN (PW3), the complainant's mother, testified that she did not find the complainant there when she returned home at about 6 p.m. She returned at 10 p.m. and said she had gone to get a book. On June 28, 2020, the complainant returned home at 11 p.m. and said she had gone to get a book. When she pressed her, she said she had been with the appellant. A pregnancy test was done, and it was positive.
10. The narration by the complainant paints her as a willing participant who cannot be relied on to tell the truth. Were it not for the pregnancy, the sexual escapades of the complainant would not have come



to light. 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.

11. Due to her conduct, her evidence required corroboration. It was unsafe to depend on the complainant's evidence to establish penetration by the appellant. The proviso to section 124 of the [Evidence Act](#) states:

Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

12. Stephen Mugo Kimani, the appellant, denied the offence.
13. Although DNA is not required to prove defilement, conducting the examination was necessary in a case like this. This would have either corroborated the complainant's evidence or exonerated the appellant. The complainant gave birth on March 24, 2021, before she testified.
14. The upshot of the preceding analysis of the evidence is that the conviction was unsafe. I quash the conviction, set aside the sentence, and set the appellant at liberty unless lawfully held.

**DELIVERED AND SIGNED AT NYANDARUA THIS 21<sup>ST</sup> DAY OF MAY 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

