



**LNK v Republic (Criminal Appeal E036 of 2024)  
[2025] KEHC 6916 (KLR) (Crim) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6916 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL E036 OF 2024**

**KW KIARIE, J**

**MAY 22, 2025**

**BETWEEN**

**LNK ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E022 of 2023 of the Senior Principal Magistrate's Court at Ol Kalou by Hon. Judicaster Nthuku, Principal Magistrate)*

**JUDGMENT**

1. Lilian Njoki Kimani, the appellant herein, was convicted of the offence of gang defilement contrary to section 10 of the [Sexual Offences Act](#) No.3 of 2006.
2. The particulars of the offence were that diverse dates between October and November 2022 in Kipipiri Sub County within Nyandarua County in association with another not before court, intentionally and unlawfully caused the penis of MMN to penetrate the vagina of MWM, a child aged 16 years.
3. The appellant was sentenced to ten years' imprisonment. She has appealed against both conviction and sentence.
4. She was in person and raised grounds of appeal as follows:
  - a. The learned trial magistrate erred in law by failing to consider and address the critical ingredients of the offences on record.
  - b. The learned trial magistrate erred in law and fact in her appreciation of the principle of common intention, thereby arriving at a wrong conclusion of guilt to the detriment of the appellant.



- c. The learned trial magistrate erred in law and fact by relying on evidence full of contradictions and inconsistencies.
  - d. The learned trial magistrate erred in law and fact by assuming that the pregnancy that the complainant carried was as a result of rape.
  - e. The learned trial magistrate erred in law and fact by directing her mind on extraneous facts over and beyond the ones presented in the case before her, thereby occasioning a miscarriage of justice by importing erroneous assessment of facts presented by the prosecution.
  - f. The learned trial magistrate erred in both matters of law and fact by convicting the appellant on a charge that was not proved to the required standards.
  - g. The learned trial magistrate erred in law and fact by disregarding the appellant's defence without giving cogent reasons, thereby denying the appellant the benefit of reasonable doubt.
  - h. The learned magistrate erred in law and fact by passing a sentence upon the appellant without taking into consideration the mitigation of the appellant
  - i. The learned trial magistrate erred in law and fact by convicting and sentencing on a wrongful misapplication of the provisions of section 124 of the *Evidence Act* against the weight of the evidence.
  - j. The trial magistrate erred in law and fact by failing to appreciate the absurdity of the circumstances of the case against the appellant where the magistrate ought to have found that there was a reasonable doubt in favour of the appellant
  - k. The learned trial magistrate erred in law and fact by convicting and sentencing the appellant on an offence committed by her husband.
5. The state did not file either grounds of opposition or submissions.
  6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence presented before the lower court and drawn my own conclusions, keeping in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs. Republic* [1972] EA 32.
  7. Section 10 of the *Sexual Offences Act* defines defilement in the following terms:
 

Any person who commits the offence of rape or defilement under this Act in association with another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.
  8. An offence of gang defilement is established against an accused person if the ingredients of defilement are established as defined in *Fappyton Mutuku Ngui vs. Republic* [2012] eKLR, where the Court said:
 

Going by this definition of defilement, I agree with Mr. Mwenda on the issues which 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.

In addition to these ingredients, it must be established that the assailant was in association with another or other persons in committing the offence of defilement or that, though the assailant did not penetrate the victim of defilement, but with common intent, was in the company of



another or others who committed the offence. In the case of *Elly Otieno Alose vs Republic* [2019] eKLR, the court held:

Under Section 10 of the Act, the key ingredients of the offence of Gang Rape include:

- a) Proof of rape or defilement;
  - b) Proof that the assailant was in association with another or other persons in committing the offence of rape or defilement or that the assailant did not per se commit the offence of rape or defilement, but with common intent, was in the company of another or others who committed the offence.
9. The complainant testified that she visited her uncle and aunt (the appellant herein) on a date she could not recall between October and November 2022. This is how she narrated her ordeal to the trial court:

Between October and November 2022, I had gone to visit my aunt I know was Wanjiru as we were good friends with her and she welcomed me well while with my uncle M and they gave me tea in the kitchen while I took. I gave aunty the cup and at time of taking tea my uncle was outside.

When I saw my aunt returning the cup, I felt my mouth being covered with a hand. I do not know who it was, but Aunty came and got hold of me. On turning, I saw it was my uncle. They took me from the main house to their bedroom. Aunty stood at the bedroom door while Uncle took me on top of the bed. The two removed my clothes, and Uncle covered my mouth with one of his hands.

10. She was subsequently defiled by her uncle. Before she was defiled, the appellant took a knife to her husband and left the bedroom.
11. In her defence, the appellant told the trial court that she was the wife of M, her co-accused, who is still at large. She did not address the issue of gang defilement.
12. The complainant was the only witness who implicated 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.

13. In this case, the complainant's evidence was corroborated by the medical evidence adduced by Dr. Mburu (PW5) and that of Joyce Kihoro (PW4). When he examined her on the 4th day of May 2023, she was 34 weeks pregnant. A DNA test was conducted upon the birth of the baby she was carrying. A government analyst reported a 99.99+ chance the baby was sired by MMN, the appellant's husband.
14. The prosecution established, to the required standards, that the appellant committed the offence of gang defilement. The appeal is without merit and is hereby dismissed.

**DELIVERED AND SIGNED AT NYANDARUA THIS 22<sup>ND</sup> DAY OF MAY 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

