



**Metioni v Republic (Criminal Appeal E019 of 2024)
[2025] KEHC 6395 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E019 OF 2024
AN ONGERI, J
MAY 16, 2025**

BETWEEN

EVANS MONACHI METIONI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence of Hon. E. M. Kadima
(PM) in Taveta S.O. case no. E043 of 2023 delivered on 16th April 2024)*

JUDGMENT

1. The appellant was sentenced to 20 years imprisonment for the offence of defilement c/s 8(1) as read with Section 8(3) of the SOA no. 3 of 2006.
2. The particulars of the charges were that on diverse dates between 2nd September and 18th September 2023 at an unknown time at [Particulars Withheld] in Taveta sub county within Taita Taveta county the appellant intentionally caused his penis to penetrate the vagina of B.M.N, a minor aged 12 years.
3. The prosecution evidence in summary that the appellant locked the complainant (PW 1) in his house on three occasions and had sexual intercourse with her before he was discovered.
4. The complainant said she had gone to the appellant's house to collect water when he pulled her into the house, locked the door from inside, laid her on a mat and removed her clothes while blocking her mouth preventing her from screaming and removed his trouser and tied her hands to the wardrobe door and defiled her.
5. Thereafter the appellant enticed the complainant twice to have sex with him. The complainant's teacher one Sadine got and the complainant was sent to Challa Dispensary and she was referred to Taveta sub county hospital for further treatment.



6. The clinical officer one George Ombayo examined the complainant and found her with a foul discharge which he attributed to sexual assault.
7. The appellant in his defence narrated how he was arrested. He denied committing defilement.
8. The trial court found the appellant guilty as charged and sentenced him to 20 years imprisonment.
9. The appellant has appealed to this court against both conviction and sentence on the following grounds;
 - i. The learned magistrate erred in law and fact when he convicted me on uncorroborated evidence thereby occasioning miscarriage of justice.
 - ii. The learned magistrate erred in law and fact when he failed to evaluate the evidence thus arriving at a wrong decision.
 - iii. Your honour, I am a first offender and never committed any crime.
 - iv. In the view of the circumstances of this case, the custodial sentence of 20 years is harsh, severe and manifest excessive.
 - v. Your honour, I beg your honourable court to reduce the conviction or slash the conviction or whoever your honourable court may deem fit.
 - vi. Supplementary grounds to follow in my written submissions.
10. The parties filed submissions as follows;
11. The appellant, Evans Monochi, submitted that he was convicted and sentenced to 20 years imprisonment for defiling a 12-year-old girl, B.M.N., contrary to Section 8(1) and (3) of the *Sexual Offences Act*. He maintains his innocence and argues that the conviction was based on fabricated evidence, inconsistencies in witness testimonies, and a failure by the prosecution to prove the case beyond reasonable doubt.
12. The appellant highlights several discrepancies in the complainant's testimony, particularly regarding the alleged acts of defilement. The minor claimed she was tied to a wardrobe with ropes, her legs placed between motorcycle tyres, and then defiled—a scenario the appellant argues is physically implausible. He questions how penetration could occur under such conditions and why the girl showed no visible distress or injuries to her friends or family afterward. Further, he points out contradictions in her statements—first claiming she informed her mother, then later denying she told anyone.
13. The appellant further submitted that the prosecution's case relied heavily on hearsay, as neither the minor's friends (EM and H) nor the boy "D," who allegedly accompanied her, testified to corroborate her account. The medical evidence was also disputed: while the clinical officer noted a broken hymen and foul-smelling discharge, the appellant argues this could not conclusively prove recent defilement, especially since the examination occurred days after the alleged incidents and no spermatozoa were found.
14. The appellant critiqued the investigation, noting that the minor was taken to the hospital before any police report was filed, suggesting possible coaching or fabrication. He also challenges the validity of the birth notification used to establish her age, as it was certified by a chief rather than a hospital, raising doubts about its authenticity.
15. The appellant cited the case of (*Warui Kirimi v Republic, Arthur Mshila Manga*), where the prosecution failed to meet the burden of proof for defilement: establishing the victim's age,



penetration, and his identity as the perpetrator. He emphasized that circumstantial evidence must be irrefutable and that suspicion alone cannot justify conviction.

16. Additionally, the appellant claims he suffers from a medical condition (testicular issues) that prevents erection, rendering the alleged acts impossible. He asserts the trial magistrate ignored these defenses and misapplied the law.
17. In conclusion, he urged the court to quash the conviction, set aside the sentence, and release him, as the prosecution's case was riddled with inconsistencies, lacked corroboration, and failed to prove guilt beyond reasonable doubt.
18. The Respondent opposed the Appellant's appeal in its entirety, arguing that the prosecution proved all elements of defilement beyond a reasonable doubt. The Appellant was convicted and sentenced to 20 years imprisonment for defiling a 12-year-old girl, as established by her birth certificate and testimony.
19. The prosecution demonstrated penetration through the victim's account of the assault, corroborated by medical evidence showing a broken hymen, vaginal bruises, and epithelial cells.
20. The victim, who knew the Appellant well, identified him as the assailant, and the offenses occurred in broad daylight, leaving no doubt about his involvement.
21. The Appellant's defence consisted of a blanket denial without addressing the specific allegations, while the victim's testimony remained consistent and unchallenged.
22. The Respondent further submitted that given the gravity of the offense—a 56-year-old man preying on a child, there is need for deterrent punishment to reflect societal condemnation of such acts.
23. Citing precedent, the Respondent argued that sexual offenses warrant severe sentences to uphold justice, deter future crimes, and protect vulnerable victims.
24. The Respondent said that the conviction and sentence were proper, and the appeal should be dismissed.
25. This being a first Appeal, the duty of the first Appellate Court is to re-evaluate the evidence and the law presented before the trial court and to arrive at its own independent conclusions.
26. This is a crucial role that ensures a fair and just outcome for the parties involved in the appeal.
27. The Court of Appeal in *Okeno v. Republic* [1972] EA 32 clearly outlined this duty, stating that;

“ A first appellate court must itself weigh conflicting evidence and draw its own conclusions... It is its duty to rehear the case on the record and to reconsider the materials before the trial judge. The appellate court must then make its own findings of fact and law, bearing in mind however that it has not had the advantage of seeing and hearing the witnesses.”
28. This principle has been consistently upheld in numerous subsequent Kenyan cases. For instance, in *Selle & Another v. Associated Motor Boat Company Ltd & Others* [1968] EA 123, the court reiterated that;

“ ... the Court on first Appeal is not bound to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the evidence itself on the face of it bears no sufficient weight to support the findings.”



29. Therefore, when faced with a first appeal, the appellate court undertakes a comprehensive review of the trial court's decision, scrutinizing the evidence, the legal principles applied, and the overall fairness of the judgment. It is not simply a review of errors of law but a complete reconsideration of the case.
30. The issues for determination in this appeal are as follows:
 - i. Whether the appellant was positively identified
 - ii. Whether penetration was proved.
 - iii. Whether the age of the complainant was proved.
 - iv. Whether the sentence was excessive.
31. I have carefully considered the appeal, the submissions by both parties, and I have re-evaluated the evidence adduced before the trial court, on the issue of identification, I find that the complainant's evidence was corroborated by that of PW 2, the mother of the complainant who said the home of the appellant is not far from her home.
32. The prosecution established beyond reasonable doubt that the appellant was positively identified as the perpetrator. The complainant, a 12-year-old girl, knew the appellant well and gave a consistent account of how he lured her into his house, restrained her, and defiled her on multiple occasions.
33. The testimony of the complainant was clear and unwavering, despite the appellant's claims of fabrication. The fact that the offences occurred in broad daylight further strengthens the reliability of her identification.
34. The appellant's argument that the scenario was physically implausible is unconvincing, as the minor's detailed description of her restraint and the act itself was corroborated by medical evidence.
35. On the issue of proof of penetration, I find that there was sufficiently proved through the complainant's testimony, which was supported by medical evidence.
36. The clinical officer found a broken hymen, bruises in the vaginal area, and a foul-smelling discharge, all consistent with recent sexual assault.
37. While the appellant argued that no spermatozoa were detected, this does not negate penetration, as the absence of semen does not disprove sexual contact, especially given the lapse in time before the examination. The complainant's account of being tied and defiled was credible, and the medical findings reinforced her testimony.
38. On the issue of proof of the complainant's age, I find that the complainant's age was conclusively established through her birth certificate, which confirmed she was 12 years old at the time of the offence.
39. The appellant's challenge to the authenticity of the birth notification, on grounds that it was certified by a chief rather than a hospital, is without merit.
40. A birth notification issued by a government official is a valid document under Kenyan law, and no evidence was presented to suggest it was fraudulent.
41. Finally, the appellant was sentenced to 20 years' imprisonment under Section 8(3) of the *Sexual Offences Act*, which prescribes a minimum of 20 years for defilement of a child aged 12 years.



- 42. While the appellant pleads for leniency as a first offender, the gravity of the offence — a 56-year-old man repeatedly defiling a child—warrants a severe sentence to reflect societal condemnation and deter future violations.
- 43. The appellant did not table any medical evidence that he is unable to perform the act of penetration as he alleged.
- 44. I find that the trial court exercised its discretion properly, and this court finds no justification to interfere with the sentence.
- 45. The prosecution proved all elements of the offence beyond reasonable doubt. The appellant’s conviction was based on credible, corroborated evidence, and his defences were properly dismissed as unsubstantiated.
- 46. The sentence imposed was lawful and proportionate to the offence.
- 47. For the foregoing reasons, this court finds no merit in the appeal.
- 48. The conviction and sentence are hereby upheld, and the appeal is dismissed in its entirety.
- 49. The appellant is advised of his right to appeal to the Court of Appeal within 14 days

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 16TH DAY OF MAY, 2025.

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A. N. ONGERI
JUDGE

In the presence of:

Court Assistants: Maina/Millicent

..... for the Appellant

..... for the Respondent

