



**Sigei v Republic (Criminal Appeal E050 of 2023)
[2025] KEHC 6407 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL APPEAL E050 OF 2023
JK NG'ARNG'AR, J
MAY 19, 2025**

BETWEEN

WESLEY KIBET SIGEI APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Sexual Offence Case Number
56 of 2018 by Hon. Wamae M. in the Magistrate's Court at Bomet)*

JUDGMENT

1. Wesley Kibet Sigei (now Appellant) was charged with the offence of defilement contrary to Section 8 (1) as read with section 8(3) of the *Sexual Offences Act*. The particulars of the charge were that on the nights of 19th and 20th November 2018 at Kapliyo Sub-Location, Kiplabotwa Location within Bomet County, the Appellant intentionally caused his penis to penetrate the vagina of SC, a child aged 15 years.
2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that that on the nights of 19th and 20th November 2018 at Kapliyo Sub-Location, Kiplabotwa Location within Bomet County, he intentionally touched the vagina of SC, a child aged 13 years with his penis.
3. The Appellant pleaded not guilty to the charge before the trial court and a full hearing was conducted. The prosecution called five (5) witnesses in support of its case. At the close of the prosecution case, the trial court ruled that a prima facie case had been established against the Appellant and he was put on his defence. The Appellant gave sworn testimony and called two witnesses in aid of his defence.
4. At the conclusion of the trial, the Appellant was convicted of the offence of defilement and sentenced to serve twenty (20) years in prison.



5. Being dissatisfied with the Judgment of the trial court Wesley Kibet Sigei appealed against his conviction and sentence.
6. This being the first appellate court, I am conscious of the duty to re-evaluate the evidence given at the trial court and come to my own independent conclusion and decision. I now proceed to summarize the Prosecution's case and the Appellant's defence in the trial court and their respective submissions in the present Appeal.

The Prosecution's/Respondent's Case.

7. It was the Prosecution's case that the Appellant defiled SC (PW2) on the night of 19th and 20th November 2018. PW2 testified that on the material night, the Appellant took her to his house where they engaged in sexual intercourse.
8. Julius Magut (PW4) who was the clinical officer at Longisa County Referral Hospital testified that upon examining PW2, he found that the victim had an old broken hymen, had pus and epithelial cells. PW4 further testified that he found spermatozoa in the victim's genitals and it was consistent with vaginal penetration.
9. Through its written submissions dated 19th March 2025, the Respondent submitted that they proved their case beyond reasonable doubt. That the victim was aged 15 years, 9 months and it was proved by the Birth Certificates. They further submitted that there was overwhelming evidence that pointed to penetration. That the Appellant was positively identified by the victim.
10. It was the Respondent's submission that the 20-year sentence was reasonable and this court ought not interfere with it.

The Accused's/Appellant's Case.

11. The Appellant, Wesley Kibet Sigei (DW1) testified that he did not know the victim (PW2) and that he was arrested in Kiplabotwa and was not informed the reason for his arrest. DW1 further testified that there was a land dispute over the ownership of his father's land.
12. Daisy Chepkorir (DW2) testified that she was the Appellant's sister and that on the material night and following day, the Appellant and the victim (PW2) did not come to her house.
13. Eric Kiplangat (DW3) testified that he was the Appellant's brother and that when the Appellant was arrested, they were in another family's land which had a dispute. DW3 further testified that on the night of 18th and 19th November 2023, he spent the night with the Appellant.
14. In his written submissions filed on 17th October 2024, the Appellant submitted that the charge of defilement was not proved. That there were two Birth Certificates produced by PW1 and PW5 and the contradictions in the victim's age meant that her age had not been proved. The Appellant further submitted that penetration had not been proved. That he ought to have been medically examined to ascertain whether the spermatozoa was his. That his conviction was not founded on sound evidence.
15. The Appellant submitted that the mandatory minimum 20-year sentence was harsh and this court should use its discretion to divert away from mandatory minimum sentences.
16. I have gone through and given due consideration to the trial court's proceedings, the undated Petition of Appeal, the Appellant's written submissions filed on 17th October 2024 and the Respondent's written submissions dated 19th March 2025. The following issues arise for my determination: -
 - i. Whether the Prosecution proved its case beyond reasonable doubt.



- ii. Whether the Defence placed doubt on the Prosecution case.
- iii. Whether the sentence preferred against the Appellant was harsh.

i. Whether the Prosecution proved its case beyond reasonable doubt.

- 17. It is trite law that for the offence of defilement to be established, the age of the victim, penetration and positive identification or recognition of the offender have to be proved.
- 18. Rule 4 of the Sexual Offences Rules of Court 2014 provides that: -
When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.
- 19. No. 62286 PC Richard Retet (PW5) produced a Birth Certificate as P. Exh1. I have looked at the Birth Certificate and it indicated that PW2 was born on 8th February 2003. The production and authenticity of the Birth Certificate was not challenged by the Appellant during cross examination. It is my finding therefore that at the time the offence was committed, the victim (PW2) was aged 15 years old.
- 20. With regard to the issue of identification, the victim (PW2) testified that she had known the Appellant for approximately one month. PW2 further testified that on the material day, she went to Daisy's (DW2) house which was approximately a 20-minute walk from their home after which the Appellant came and took her to his house. That Stanley (PW3) came for her at Daisy's house the following day. DW2 testified that the Appellant was her boyfriend and wanted the trial court to forgive him as the commission of the offence was not his fault
- 21. When PW2 was cross examined, she testified that she and the Appellant went to the Appellant's house. Her testimony on identification remained uncontroverted.
- 22. Stanley Yegon (PW3) testified that PW1 had called him and asked him to assist in looking for PW2. PW3 further testified that he found the victim (PW2) at Daisy's (DW2) house. This testimony corroborated the victim's testimony that she was found in Daisy's house.
- 23. From the above evidence, it was uncontroverted that the Appellant was the victim's boyfriend. In my view, this was evidence of recognition. I am guided by Peter Musau Mwanzia v Republic [2008] KECA 92 (KLR) where the Court of Appeal held: -

“We do agree that for evidence of recognition to be relied upon, the witness claiming to recognise a suspect must establish circumstances that would prove that the suspect is not a stranger to him and thus to put a difference between recognition and identification of a stranger. He must show, for example, that the suspect has been known to him for sometime, is a relative, a friend or somebody within the same vicinity as himself and so he had been in contact with the suspect before the incident in question. Such knowledge need not be for a long time but must be for such time that the witness, in seeing the suspect at the time of the offence, can recall very well having seen him earlier on before the incident.....”
- 24. From the evidence above, I am clear that the victim and the Appellant were not strangers and knew each other well. Therefore, I have no reason to disbelieve or doubt that the Appellant was identified by the victim (PW2) as the perpetrator of the offence.
- 25. Flowing from the above, I am satisfied that the Appellant was positively identified by the victim (PW1). There was no possibility of mistaken identity.



26. With regards to penetration, Section 2 of the *Sexual Offences Act* defines penetration as the partial or complete insertion of genital organs into the genital organs of another person. The Prosecution has to prove penetration or act of sexual intercourse to sustain a charge of defilement.
27. Penetration can be proved through the evidence of the victim corroborated by medical evidence. In the instant case, I shall carefully evaluate the victim's testimony and the medical evidence tendered.
28. S.C (PW2) testified that on the material night, the Appellant took her to his house where he inserted his penis into her vagina. Her testimony on the sexual intercourse remained uncontroverted after cross examination.
29. On the medical evidence, Julius Magut (PW4), a Clinical Officer at Longisa County Referral Hospital testified that he examined the victim (PW2) and found that she had epithelial cells. PW4 further testifies that upon high vaginal swab, he found that she had pus cells and spermatozoa which in his professional opinion was consistent with vaginal penetration. PW4 produced treatment notes and the PRC Form as P. Exh 1 and respectively. I have gone through the treatment notes and the PRC Form and both confirm the findings as testified by PW4. I accept the medical evidence presented by PW4 that there was penetration.
30. In light of the above and in addition to the victim's testimony, it is my finding that the victim (PW2) was penetrated by the Appellant.
31. Based on the totality of the evidence before me, it is my finding that the Prosecution satisfactorily established the age of the complainant, proof of identification and penetration. It is also my finding that Prosecution proved its case against the Appellant beyond reasonable doubt.
32. The Appellant submitted that he could not be linked to the spermatozoa found in the victim's vagina as he was not medically examined. Section 36(1) of the *Sexual Offences Act* provides that: -
Notwithstanding the provisions of section 26 of this Act or any other law, where a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific testing, including a DNA test, in order to gather evidence and to ascertain whether or not the accused person committed an offence.
33. The Court of Appeal in the case of Robert Mutungi Muumbi v Republic [2015] KECA 584 (KLR), held that: -
"Section 36 (1) of the Act empowers the Court to direct a person charged with an offence under the Act to provide samples for tests, including for DNA testing to establish linkage between the accused person and the offence. Clearly, that provision is not couched in mandatory terms. Decisions of this court abound which affirm the principle that medical or DNA evidence is not the only evidence by which commission of a sexual offence may be proved."
34. Similarly in AML v Republic [2012] KEHC 2554 (KLR), held: -
"..... The fact of rape or defilement is not proved by a D.N.A test but by way of evidence."
35. It is my finding therefore that it was not mandatory for the Appellant to be medically examined or a DNA test conducted on the spermatozoa DNA test on the spermatozoa to provide a link between him and the offence. What the Prosecution needed to prove was penetration which they have.



ii. Whether the Defence placed doubt on the Prosecution's case.

36. The Appellant's (DW1) defence was aptly captured in detail earlier in this Judgment. The Appellant did not deny committing the offence. He testified that he was arrested by the police and that there was a land issue regarding the ownership of his father's land. When he was cross examined, he testified that the land issue was between him, his brother (DW3) and Father Paul Rono and did not have anything to do with the Prosecution's witnesses.
37. Daisy Chepkorir Rotich (DW2) testified that she was the Appellant's sister and that on the material night, the Appellant and the victim (PW2) did not come to her house. This evidence was in contrast with the evidence of the victim who testified that she went to DW2's house from where the Appellant picked her up. The victim further testified that PW3 came for her from DW2's house the following day, a fact that was corroborated by Stanley Yegon (PW3). It is my finding that DW2's testimony was a denial and was uncorroborated.
38. Erick Kiplangat Sigei (DW3) testified that he was the Appellant's brother and that on the material day, the Appellant was arrested at their family home. He testified that on the night of 18th and 19th November 2018, he spent the night with the Appellant. When he was cross examined, he testified that he came to Kiplabotwa on 19th November 2018 in the evening. This evidence was immaterial in my view as it addressed the events of 18th and 19th November 2018 (evening) and not on the material time which was the night of 19th to 20th November 2018. The alleged land dispute has no relation or nexus with the charge that the Appellant faced.
39. Having considered the above testimonies, it is my finding that they are weak and as a whole, did not cast any doubt on the Prosecution's case which I have already found proven.

iii. Whether the sentence preferred against the Appellant was harsh.

40. Sentencing is at the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. The trial court must be guided by the evidence and sound legal principles.
41. The penal section for this offence is found in section 8(3) of the [Sexual Offences Act](#) which states that: -
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.
42. As earlier stated, the trial court sentenced the Appellant to serve 20 years imprisonment.
43. In the face of mandatory minimum sentences as prescribed above by section 8(3) of the [Sexual Offences Act](#), it has been held that courts should have discretion in sentencing after considering the circumstances of the case and the Accused's mitigation. The Court of Appeal in *Dismas Wafula Kilwake v Republic* [2019] KECA 5 (KLR) held: -

“Here at home in a judgment rendered on 14th December 2017 in *Francis Karioko Muruatetu & Another v. Republic*, SC Pet. No. 16 of 2015, the Supreme Court concluded that the mandatory death sentence prescribed for the offence of murder by section 204 of the [Penal Code](#) is unconstitutional. While appreciate that the decision had nothing to do with the [Sexual Offences Act](#), we cite it because of the pertinent observations that the apex Court made regarding mandatory sentences.....

..... In principle, we are persuaded that there is no rational reason why the reasoning of the Supreme Court, which holds that the mandatory death sentence is unconstitutional



for depriving the courts discretion to impose an appropriate sentence depending on the circumstances of each case, should not apply to the provisions of the *Sexual Offences Act*, which do exactly the same thing.”

44. I have considered the circumstances of this case and the fact that the victim was aged 15 years old at the time the offence was committed.
45. Flowing from the above, it is my finding that the Appeal against conviction has no merit.
46. The sentence too is legal and find no reason to interfere. Consequently, the appeal herein is dismissed.
47. Both the conviction and sentence are upheld.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 19TH DAY OF MAY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of the Appellant and Mr. Njeru for the Respondent. Siele/Susan (Court Assistant).

