



**William v Republic (Criminal Appeal E029 of 2024)  
[2025] KEHC 6099 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6099 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E029 OF 2024  
AN ONGERI, J  
MAY 16, 2025**

**BETWEEN**

**JOHN AMUKHALE WILLIAM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence by Hon. C. K. Kithinji  
(PM) in Voi S.O. Case no. E013 of 2023 delivered on 23rd May 2024)*

**JUDGMENT**

1. The appellant was convicted on two counts of defilement c/s 8(1) as read with Section 8(2) of the SOA No. 3 of 2006 and he was sentenced to serve life imprisonment.
2. The particulars of the two charges were that on diverse dates between the year 2022 and 15<sup>th</sup> March 2023 at [Particulars Withheld] in Voi sub county within Taita Taveta county, the appellant unlawfully and intentionally committed an act which caused penetration of his male genital organ (penis) into the female genital organ (vagina) of JA (count1) a child aged 8 years and J.K (count 2) a child aged 8 years.
3. The appellant was charged with an alternative count of committing an indecent act with a child contrary to Section 11(1) of the SOA no. 3 of 2006 in that in the same material facts as count 1 and 2 above, the appellant caused his male genital organ (penis) to touch the female genital organ (vaginas) of the two complainants, both children aged 8 years.
4. The appellant denied the charges and the prosecution called seven (7) witnesses in support of their case.
5. The prosecution evidence in summary was that the two complainants both aged 8 years old were playing outside the home of the complainant in count II when the appellant called them to his place.
6. The minors went to his room which is a one bedroomed house and the appellant asked the minors to remove their clothes and lie down.



7. The appellant told them to dance and he touched them on the waistline as they danced.
8. The appellant told them to lie down and he unzipped his trouser and put his penis on the vagina of the complainant in count II first then went to the complainant in count I and did the same.
9. The complainants did not scream. They said the appellant kissed them and told them not to tell anyone. He gave them mabuyu and biscuits and they left for their homes.
10. The minors were then found in the toilet at school having removed their clothes and playing as they did with the appellant. They said were doing what the appellant taught them.
11. PW 3 Agnes Wakulei Mwameso, a teacher at [Particulars Withheld] primary said the girls were taken to Ndovu hospital and the parents were called. The defilement was confirmed and the appellant was subsequently arrested and charged.
12. PW 6 Dr. Joto Nyawa who examined the minors said the complainants in count II hymen's was broken and the complainant in count II had a large vaginal orifice indicating habitual defilement.
13. The minors confessed that the appellant had been defiling them since 2022 to 15<sup>th</sup> March 2023.
14. The complainant in count I JA had a torn hymen which was painful. She had blood stains on the clitoris and painful and tender on examination.
15. The appellant called one witness DW 2 (Francis Mwamburi) to testify for the defence.
16. The appellant said he lives at Msambweni at Voi Kaloleni location. He said he is an artist in modern music and he is also known as Tropikana.
17. The appellant said on 16<sup>th</sup> March 2023 while at his house with DW 2 his co-artist, he was arrested by three police officers in civilian who told him they would disclose later why they had arrested him.
18. The appellant said to his surprise he was remanded and charged on 17<sup>th</sup> with defilement. He said he denied the charge and continues to deny the same. DW 2 said he was with the appellant when he was arrested on 16<sup>th</sup> March 2023.
19. The trial court found the appellant guilty as charged on the two counts of defilement and sentenced him to life imprisonment.
20. The appellant has appealed to this court on the following grounds;
  - i. That there are glaring inconsistencies and material contradictions that cannot sustain the charge facing the Appellant.
  - ii. That the learned trial magistrate erred in law and in fact in failing to find that the prosecution evidence did not prove that the Appellant caused his genital organ to penetrate the complainants' genital organ.
  - iii. That the learned trial magistrate erred in law and in fact in holding that the prosecution had proved its case beyond reasonable doubt against the Appellant yet the essential ingredients of the offence as charged were not proved against the Appellant.
  - iv. That the learned trial magistrate erred in law and in fact in convicting the Appellant on evidence which did not meet the required standard but based on hearsay, lies and conspiracy and borne out of malice and ill-will among the prosecution witnesses



- v. That the learned trial magistrate erred in law and in fact in dismissing PW1's testimony that all she had stated were lies and that she was only told to say as such by PW2. Even upon re-examination of PW1 by the court, PW1 still maintained that the Appellant never told them to go to his home and that it is another person who entered her private parts, not the Appellant.
  - vi. That the sentence of life imprisonment is extremely harsh, wrongful and unlawful based on the circumstances of this matter.
21. The parties filed written submissions as follows;
  22. The Appellant's written submissions challenged the conviction and life sentence imposed by the trial court for defilement and committing an indecent act with a child under the *Sexual Offences Act*.
  23. The Appellant argued that the prosecution failed to prove its case beyond reasonable doubt, citing glaring inconsistencies, material contradictions, and reliance on uncorroborated hearsay evidence.
  24. The core of the defence hinges on the testimonies of the two minor complainants (PW1 and PW2), who recanted their allegations during cross-examination and re-examination, explicitly stating that their initial claims were lies and that another person—not the Appellant—committed the acts.
  25. The Appellant's submissions emphasized that the minors' unsworn testimonies lacked corroboration, as no witness saw the Appellant with the children, nor was there any physical evidence linking him to the alleged crimes. The prosecution's case was further undermined by the absence of a clear timeline, the failure to examine the Appellant medically, and the lack of any independent witness to the alleged incidents.
  26. The Appellant further submitted that the trial court did not record reasons for believing the minors' truthfulness, as required under Section 124 of the *Evidence Act* for unsworn child testimony in sexual offenses.
  27. The Appellant contends that the trial magistrate erred in disregarding the minors' retractions and the absence of corroborative evidence, violating the principle that any reasonable doubt must favor the accused.
  28. Citing precedents like *Okeno v Republic* and *Wamunga v Republic*, the submissions stress that identification evidence must be scrutinized carefully, especially where the sole evidence is uncorroborated testimony from children of tender years.
  29. Given the above flaws, the Appellant urged the appellate court to overturn the conviction and sentence, arguing that the prosecution's case was riddled with inconsistencies, contradictions, and insufficient proof of the Appellant's guilt.
  30. The Respondents opposed the appeal challenging both the conviction and sentence imposed by the trial magistrate in this defilement case.
  31. They submitted that the prosecution proved all elements of the offence beyond reasonable doubt, establishing the minors' ages through birth certificates, penetration through consistent testimonies of the victims (PW1 and PW2) supported by medical evidence, and proper identification of the Appellant as a known neighbor who went by the name "Tropicana."
  32. While acknowledging inconsistencies in the minors' testimonies, the Respondents contend these were minor and did not undermine the core of the prosecution's case, as the trial court properly assessed the witnesses' demeanor and the context of their fear and intimidation.



33. Regarding the life sentence, the Respondents asserted that it was justified given the gravity of the offences, the young age of the victims, and the Appellant's lack of remorse.
34. The Respondents emphasized that the trial court exercised discretion appropriately by considering mitigating factors, probation reports, and victim impact statements, aligning with precedent where appellate courts have upheld life sentences in similar defilement cases.
35. The Respondents urged the court to dismiss the appeal in its entirety, maintaining that the conviction and sentence were sound in law and fact.
36. This being a first appeal, the court is obligated to re-examine the evidence afresh, weigh it independently, and draw its own conclusions while giving due allowance for the trial court's advantage of observing the witnesses' demeanor.
37. 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 ages of the complainants were proved.
  - iv. Whether the sentence is too harsh.
38. I have carefully considered the submissions of both parties, and the trial court's proceedings, on the issue of identification of the Appellant, I find that the prosecution's case relied heavily on the testimonies of the two minor complainants (PW1 and PW2), who initially identified the appellant as the perpetrator.
39. However, during cross-examination and re-examination, both minors recanted their allegations, stating that their earlier claims were lies and that another person—not the appellant—had committed the acts.
40. This retraction creates a significant doubt as to the reliability of their identification.
41. Moreover, no independent witness placed the appellant with the minors at the material time. The prosecution did not provide any other evidence linking the appellant to the alleged crimes.
42. The children were found naked at their school and they said they were doing what the appellant taught them.
43. I find that while the trial court may have found the minors' initial testimonies credible, their subsequent recantation undermines the prosecution's case.
44. In sexual offences, the testimony of a child must be treated with caution, and where it is uncorroborated and later recanted, it cannot safely sustain a conviction.
45. On proof of penetration, I find that the medical evidence of (PW6) confirmed that both complainants had broken hymens and other injuries consistent with sexual assault.
46. However, the critical link between these findings and the appellant was severed when the minors denied that he was the perpetrator.
47. The medical report, while proving penetration occurred, does not by itself implicate the appellant. Without reliable testimony connecting him to the act, this element remains unproven against him.



- 48. On the issue of proof of the ages of the complainants, I find that there was sufficient proof established through birth certificates and the testimony of their teacher (PW3). This was not seriously contested, and the court finds no fault in the trial court’s conclusion on this element.
- 49. However, given the court’s finding that the conviction was unsafe, the issue of sentencing becomes moot.
- 50. In this case, I find that the prosecution failed to prove the appellant’s guilt beyond reasonable doubt.
- 51. The inconsistencies in the minors’ testimonies, their subsequent retractions, and the absence of corroborative evidence render the conviction unsafe.
- 52. The trial magistrate erred in disregarding the recantations and relying solely on the initial, unsworn testimonies of the children without proper corroboration as required under Section 124 of the *Evidence Act*.
- 53. The appeal is allowed and the conviction is quashed, and the life sentence is set aside.
- 54. The appellant shall be released from custody forthwith unless otherwise lawfully held for any other reason.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 16<sup>TH</sup> 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

