



**EOM v Republic (Criminal Appeal E009 of 2023)  
[2025] KEHC 11163 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11163 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL APPEAL E009 OF 2023  
WA OKWANY, J  
JULY 24, 2025**

**BETWEEN**

**EOM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment, Conviction and Sentence of the Principal Magistrate's Court at Keroka in Criminal (SO) Case Number 44 of 2019 delivered by Hon. B.M. Kimtai, Principal Magistrate delivered on 19th April 2023)*

**JUDGMENT**

1. The Appellant, EOM, was charged with three counts of defilement under Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. The first count alleged that, between 7th April 2019 and 17th November 2019 at [Particulars Withheld] Sub-location in Masaba South Sub-county, Kisii County, he intentionally and unlawfully caused his penis to penetrate the vagina of S.K. (particulars withheld), a 14-year-old child. He also faced an alternative charge of committing an indecent act with the same child by unlawfully touching her vagina with his penis during the same period.
2. The second count related to D.B. (particulars withheld), a 12-year-old child, whom he was similarly accused of defiling over the same timeframe and location, with an alternative charge of committing an indecent act involving unlawful touching.
3. The third count involved C.K. (particulars withheld), a 13-year-old child, with allegations mirroring the previous counts, defilement and, in the alternative, committing an indecent act. All offences were alleged to have occurred within the same period and locality.
4. The Appellant pleaded not guilty to all the charges and a trial was conducted in which the prosecution called a total of seven (7) witnesses.



## The Prosecution's Case

5. The prosecution presented evidence from several witnesses regarding repeated incidents of defilement involving the Appellant, who was identified as a relative and neighbour to the victims. PW1, S.K., a 14-year-old girl, testified that on multiple occasions, the Appellant lured her and two other minors, C.K. and D.B., into his house under various pretences before locking the door, threatening them with a knife, and defiling them in turns while using condoms. She narrated specific incidents on 7th April and 17th November 2019, during which the abuse occurred, and detailed how they were later found by their mothers who took them to Gesusu Hospital and reported the matter to the police.
6. PW2, C.K., a 13-year-old girl, confirmed S.K.'s account and described similar events where the Appellant gave them money after the acts and again abused them on other dates, including one where he asked them to go to his place in Keroka. She recounted how the abuse was discovered by their mothers during one of the incidents when they found the girls locked inside the Appellant's house.
7. PW3, D.B., aged 12, also supported the testimonies of PW1 and PW2, stating that the Appellant defiled her and the others on more than one occasion. She recalled incidents where he lured them using errands and food, then proceeded to defile them and threatened them into silence. She further described the events leading to the day their mothers caught the Appellant in the act.
8. PW4, Z.M. (particulars withheld), the mother of S.K. and guardian to D.B., testified that she found the girls locked in the Appellant's house and saw watery discharge from their genitalia, prompting her to seek medical attention and report to the police.
9. PW5, D.M. (particulars withheld), C.K.'s mother, gave corroborative evidence of the events of 17th November 2019 when she was informed that her daughter had gone to the Appellant's house. Upon investigating with PW4, she found the door locked and witnessed the Appellant fleeing from the scene.
10. PW6, a clinician from Gesusu, confirmed examining the three minors and concluded they had been defiled. He presented medical records and P3 forms in support of his findings. PW7, the investigating officer, corroborated the narrative, confirming that the Appellant had defiled the minors on several occasions and had a pattern of luring them and offering money. He also testified about recovering physical evidence from the scene, including a red panty and condoms, and about the Appellant's arrest the following day.
11. Upon considering this evidence, the trial court found that the Appellant had a case to answer. The court explained the Appellant's rights under Section 211 of the *Criminal Procedure Code*, and he chose to give sworn evidence and call a witness in his defense.

## The Appellant's/Defence Case

12. The Appellant, DW1, testified that he was a barber from Rianyoka and denied committing the offences. He claimed that on the alleged dates, he was at work from 6:00 a.m. to 6:00 p.m., maintaining a consistent routine of having tea at a local hotel before work and returning home afterward. He further testified that on 18th November 2019, while at work, a woman named Zipporah came to his barbershop with two young men. After shaving one of them, a disagreement ensued over payment, leading to a commotion that attracted a crowd. This incident resulted in him being taken to the police station, where he was detained and later brought to court on 21st November 2019.
13. DW2, NO, testified that the Appellant, his cousin, came to his hotel on a Sunday to take tea and read a newspaper. The Appellant returned the next day to follow up on the newspaper. DW2 confirmed that he knew nothing about the defilement allegations.



14. Despite the Appellant's defence, the trial court found him guilty on all three counts of defilement. He was sentenced to 20 years imprisonment for each count, with the sentences ordered to run consecutively.

### **The Appeal**

15. Dissatisfied with both the conviction and sentence, the Appellant filed the instant appeal in which he raised nine grounds. He argued that the trial magistrate erred in law and fact by finding that the offence of defilement under Section 8(1) and (2) of the [Sexual Offences Act](#) had been proven, despite there being no evidence of penetration.
16. He also contended that the conviction was based on uncorroborated testimony, in contravention of legal standards. The Appellant claimed that the prosecution's evidence was inconsistent with the charges and that the magistrate misunderstood the legal provisions, resulting in findings unsupported by the evidence.
17. He further alleged that the complainants' testimonies were accepted uncritically and without proper scrutiny thereby leading to a miscarriage of justice. Additionally, he argued that the burden of proof was improperly shifted onto him, that the judgment failed to comply with Section 169 of the [Criminal Procedure Code](#), and that the trial and sentence were unlawful and unconstitutional. Lastly, he asserted that the sentence of 20 years for each count, ordered to run consecutively, was grossly excessive given the circumstances of the case. Bottom of Form
18. The appeal was canvassed by way of written submissions which I have considered.
19. The duty of the first appellate court is to subject the entire evidence to a fresh analysis in order to arrive at its own conclusions while bearing in mind the fact that it neither heard nor saw the witnesses testify and to give an allowance for it. In the case of Njoroge vs. Republic (1987) KLR 19 at P. 22:4 the Court of Appeal held thus: -

“As this court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well as on the questions of facts as on questions of law, to demand a decision of the court of the first appeal, and that court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen or heard the witnesses and to make due allowance in this respect (see Pandya V. R.(1957) EA 336, Ruwalla V. R. (1957)EA 570)”

### **Analysis and Determination**

20. I have carefully considered the grounds of appeal, the evidence on record, and the applicable law. The core issue for determination is whether the prosecution proved its case beyond reasonable doubt as required under Section 107(1) of the [Evidence Act](#), and whether the conviction and sentence were proper in law.
21. The offence of defilement is defined under Section 8(1) of the [Sexual Offences Act](#), which provides that: -

A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.



22. Section 8(3) prescribes the penalty for defiling a child aged between 12 and 15 years as follows: -

A person who commits an offence of defilement with a child aged between twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

23. From the evidence on record, it is not in dispute that the victims, S.K. (14 years), C.K. (13 years), and D.B. (12 years) were all minors at the time of the offence. Their ages were duly established and corroborated by birth certificates and/or birth notifications produced in court as exhibits. The issue of their minority age was therefore not in contention.

24. On the issue of penetration, the prosecution adduced direct evidence through the testimonies of the three minor victims (PW1, PW2, and PW3), each of whom gave detailed and consistent accounts of what transpired on the various occasions. Their evidence was supported by the medical findings presented by PW6, the clinical officer, who confirmed signs consistent with defilement. Under Section 2 of the *Sexual Offences Act*, “penetration” is defined as:

“the partial or complete insertion of the genital organs of a person into the genital organs of another person.”

25. All the victims consistently testified that they had sexual intercourse with the Appellant on diverse dates and that the Appellant, who was well known to them as their uncle and neighbor, would lure them to his house, threaten them and defile them in turns. PW1 testified as follows: -

“...I went to accused home on 7/4/2019. This was the first time. I was with C.K. I also went to his place on 14/4/2019. I was with C.K. and D.B... Accused ordered us to remove our clothes, he then wore a condom on his male thing (penis) and inserted in my genitalia (vagina). He finished and proceeded to Cynthia using the same condom. He then inserted into Cynthia’s vagina. When he finished we showered and we all went home.... On 17/11/2019... we saw him...We went i.e. me, C.K. and D.B. to his place. He ordered us to remove clothes, he then started with C.K. then me and finally D.B...”

26. PW2 stated as follows:-

“On 7/4/2019.... when the accused came.... He told us to go to his house he had some money he was to give us... I was with S.K... he told us to remove clothes, we went to his bedroom and he then removed his penis, he started by inserting it into S.K.’s genitalia (vagina) and when he was done, he wore a condom and came to me and inserted his penis on my vagina....I took a shower.... We did not tell anyone.... We went back to accused home on 10<sup>th</sup>, I cannot remember of which month. I was with D.K. it was on a Saturday... he found us at our gate he told us to go to his place. It was around 9 a.m... he told us to go to his bedroom, there he told us to remove our clothes ...he started by doing bad things to me. He removed his penis and inserted in my vagina, then he went to D.B. and did the same, when he finished, he told us we go to his place in Keroka so that he would give us money....

On 14/4/2019 we went the three of us to the accused’s place... he told us to remove our clothes, he also removed his clothes he started with S.K. then me, then finally D.B. When he was done he gave us Shs. 100/=....

We also went back to the accused home on 17/11/2019...we were three of us, i.e. D.B., S.K. and me... we went to his home.... he ushered us to his bedroom. He told us to remove



clothes. He also removed his clothes. He then started with S.K. he took his penis and inserted in her vagina as he was going on, my mother came to the window....”

27. PW3 stated as follows: -

“...On 10/4/2019 ...Accused came with some porridge he closed the door, he told me with C.K. that he would tie us, he then took us to his bedroom. He ordered C.K. to remove her clothes then he removed his. He then slept on C.K. and C.K. complained that it was painful, he then told me it was my turn and I also felt painful. He removed his male thing (penis) and put it in my vagina. He gave us Kshs. 30/= each and told us to leave.... On 14<sup>th</sup> on a month I can't remember he told us to go to his barber shop in Keroka....We later went there, we were three of us. He then opened the door, he then slept with C.K., we removed our clothes. He threatened us that he would stab us, he then did bad things to all of us....”

28. The trial court found that the evidence of the minors credible and truthful. In the case of Mohammed vs. Republic [2005] eKLR, the Court of Appeal held that the evidence of a single witness, if believed, is sufficient to sustain a conviction. In the present case, I find that the testimonies of the minors were not only consistent but were also corroborated by medical and circumstantial evidence. My findings are buttressed by the medical evidence of PW6 who presented medical evidence in respect of S.K. as follows: -

- a. Wet and stained clothing on her pant (mucoïd);
- b. Head injuries
- c. Bruised genitalia on labia minora, vagina wall and cervix with minimal bleeding.
- d. PITC lab test was negative.
- e. H.V.S. Non-reactive
- f. Urinalysis – No abnormalia.

\*Conclusion there was defilement with weapon used being penile.

29. The Clinical Officer testified as follows on his findings upon examining D.B.: -

- a. No stained clothing
- b. No injuries on head, neck or abdomen
- c. Bruises on cervix, labia minora and vaginal wall with minimal bleeding.
- d. Lab result were all negative as the suspect used a condom.

\*Conclusion there was defilement with weapon used being penile.

30. PW6 also stated that on examining C.K. he found that: -

- a. No stains or tears on the minor's clothing
- b. Bruises on the labia minora, cervix and vaginal wall with inflammation on the said organs with minimal bleeding.

\*Conclusion there was defilement.

31. My finding is that the Appellant's claim that there was no corroboration is thus not tenable in the face of the irrefutable evidence of PW6. I find guidance in the decision in Kinyua vs. Republic [2002] 1



KLR 256, where the court held that corroboration is not a requirement of law but of practice and the court may still convict where it is satisfied that the witness is telling the truth.

32. On the identification of the Appellant as the perpetrator of the offence in question, I note that the Appellant was not only a relative (uncle) of the victims, but was also their neighbor. PW1 stated that he was her uncle, a cousin to her mother and this evidence was further corroborated by the testimony of her mother PW4 who stated that the Appellant was her cousin. PW2 stated that the Appellant was their neighbor while PW3 stated that he was their uncle. I am satisfied that the Appellant was positively identified by the victims as their assailant. It is also instructive to note that the Appellant did not deny that he was related to the victims,
33. I find that there is no merit in the Appellant's argument that the trial court shifted the burden of proof to him as the trial magistrate rightly held that the prosecution bore the burden of proving the case beyond reasonable doubt. It is my finding that there is nothing in the judgment to suggest that this burden was ever placed on the Appellant. I note that the Appellant was afforded an opportunity to defend himself and that he even called a witness. His defence of alibi was considered but found wanting, particularly because it failed to dislodge the direct and compelling evidence presented by the prosecution.
34. On the complaint that the judgment did not comply with Section 169 of the *Criminal Procedure Code*, I have examined the record and judgment of the trial court and find that the learned magistrate duly stated the points for determination, the decision thereon, and the reasons for the decision. This complaint is, therefore, unfounded.
35. Turning to the contention that the sentence imposed was manifestly excessive, I find that the allegation was not factual as the trial court imposed the minimum sentence prescribed by Section 8(3) of the *Sexual Offences Act*. The only arguable issue is whether the order for the sentences to run consecutively was lawful.
36. In *John Njenga vs. Republic* [2009] eKLR, the court held that where multiple offences arise out of the same transaction or series of related acts, concurrent sentences are preferable, unless the offences are particularly heinous or involve distinct victims. In this case, the offences involved three separate victims, defiled on different occasions. As such, I find that the decision by the trial magistrate to impose consecutive sentences was justified and within the law. My finding is bolstered by the decision in *Ondiek vs. Republic* [2021] KECA 278 (KLR) where the Court of Appeal emphasized that concurrent sentencing is not automatic where separate victims are involved.
37. In sum, having re-evaluated the evidence afresh as required of a first appellate court and considered the Appellant's grounds of appeal and submissions, I find no merit in the appeal against both conviction and sentence. The prosecution proved its case beyond reasonable doubt on all three counts. The evidence was credible, consistent, and corroborated by both medical and circumstantial evidence. The sentence was lawful and appropriate in the circumstances.

## Conclusion

38. The appeal is hereby dismissed in its entirety. The conviction and the sentence imposed by the trial court are upheld, but with a rider that the sentences shall be computed to take into account the period, if any, that the Appellant spent in custody while awaiting his trial in line with the provisions of Section 333(2) of the *Criminal Procedure Code*.
39. It is so ordered.



**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA  
MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**W. A. OKWANY**

**JUDGE**

