**Ijakaa v Republic (Criminal Appeal E021 of 2024)**
**[2025] KEHC 10518 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10518 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BUSIA**

**CRIMINAL APPEAL E021 OF 2024**

**WM MUSYOKA, J**

**JULY 18, 2025**

**BETWEEN**

**DISMAS BENARD IJAKAA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal arising from conviction and sentence, in Malaba SPMCSOC No. 19 of 2023, by Hon. AZ Ogange, Resident Magistrate, RM, on 23rd May 2024 and 27th June 2024, respectively)***

## JUDGMENT

1. The appeal herein arises from a conviction for the offence of defilement of a minor of 10. The appellant had denied the charges, and a trial had been conducted.

2. The respondent called 4 witnesses to prove its case. PW1 was the investigating officer. PW2 was the child who had been allegedly defiled. The appellant allegedly took her to a place near a river, where he defiled her. That was on 22nd August 2022. That happened again 3 times thereafter. He was found out and reported to PW3, the mother of PW2. PW3 picked up the issue on 29th August 2022, with respect to the defilement which happened on that day. She took PW2 to hospital and reported the matter at the police station. She testified that PW2 was born on 19th November 2014, and produced a certificate of birth to back that, which was produced by PW1, as P. Exhibit No. 4. PW4 was a clinician. She had examined PW2 and noted that she had unhealed lacerations on her labia, and her hymen was torn. There was tenderness on the lower part of her abdomen. Her urine had pus cells, yeast cells and phishes.

3. In his defence, the appellant denied the offence. He gave a detailed account of how he spent 29th August 2022, the day it was alleged the defilement happened. He called 2 witnesses, DW2 and DW3, with whom he had allegedly interacted on 29th August 2022, for the narrative that he could not have defiled PW2 on that day.

4. In its judgement, the trial court was satisfied that the 3 elements or ingredients for the offence had been established: the age of PW2, penetration and that the appellant was the perpetrator. The appellant was sentenced to 30 years imprisonment, after the court noted that the appellant was a child of tender years at the material time, the appellant was a protector who turned predator, the offence was prevalent in the North Teso County region and the appellant had threatened witnesses.

5. The appeal is premised on a petition, dated 2nd July 2024. There are 3 key grounds: lack of corroboration, age of PW2 not specifically proven and contradictions in the evidence.

6. PW2 testified in a straightforward manner, describing how the appellant preyed on her and what he did to her. He was well known to her, as a neighbour and a teacher. She identified him as an uncle.

7. Was there corroborative evidence?

8. Let me start with stating the position that it is now no longer mandatory to provide corroborative evidence to prove sexual offences. The trial court can convict, based only on the testimony of the complainant, so long as the court finds her account truth and reliable. The complainant is, after all, the victim. The defilement would have happened to her. Her account ought to be the most important bit of evidence, upon which the trial court should decide the case. Corroboration would only be critical for child victims of fairly tender age, who would not be able to give a coherent account of what happened to them.

9. The account, that PW2 gave, was clear. The trial court noted and recorded her demeanour, as she testified, and was convinced, in the end, that she had told the truth. That, alone, should have sufficed for it to convict.

10. Nevertheless, there was corroboration. PW2 made a report of her ordeal to PW3, who took her to hospital, and escalated the matter to the police thereafter. PW1 testified of getting that report, and the steps that she took leading up to the arraignment of the appellant. PW3 was the clinician, who attended to PW2. She noted material that pointed to defilement. such as unhealed lacerations on the labia, a missing hymen; pus cells, yeast cells and phises. The testimonies of PW1, PW3 and PW4 provided corroboration to the testimony of PW2, even though the trial court could quite properly convict without the corroborative evidence.

11. On the age of PW2 not being specifically proven, her mother, PW3, testified. There can be no better evidence than that of the mother of PW2. She gave birth to her, and it should be expected that she would be the best person to tell when that happened. In addition, there was documentary evidence, which was secondary evidence, by way of a certificate of birth. It was presented by PW3, and was produced by PW1, who had to be recalled for that purpose. There was overwhelming evidence on the date of birth of PW2.

12. On contradictions, it is trite that they are to be expected. These events unfold unscripted. It should be expected that witnesses may not give testimonies that are exact replicas of each other. It is also trite that contradictions are only relevant if they go to the core of the matter. In this case, I have not seen contradictions that are material, and, therefore, affecting the outcome of the matter.

13. Overall, I am not persuaded that the appeal herein is merited. I hereby affirm the conviction.

14. On the sentence, the appellant was charged under section 8(2) of the *Sexual Offences Act*, which provides for a mandatory life sentence upon conviction. The upper age limit is 11, under that provision. The charge put the age of PW 2 at 10. PW2 was born on 19th November 2014, which made her 7 years

2 months and 21 days old at the time of the alleged defilement. Upon conviction, the appellant should have been sentenced to mandatory life imprisonment.

15. I believe that the trial court was guided by Wachira & 12 others [2022] KEHC 12795 (KLR)(Mativo, J) and Maingi & 5 others vs. Director of Public Prosecutions & another [2022] KEHC 13118 (KLR) (Odunga, J), Julius Kitsao Manyeso vs. Republic [2023] eKLR (Nyamweya, Lesiit & Odunga, JJA) and Ayako vs. Republic [2023] KECA 1563 (KLR) (Okwengu, Omondi & J. Ngugi, JJA). However, these decisions have since been declared to be bad law in Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ) and Republic vs. Ayako [2025] KESC 20 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), where it was pronounced that the sentences imposed by the provisions of the *Sexual Offences Act*, whether as minimum or mandatory sentences, are constitutional and lawful, and trial courts would have no discretion to impose sentences other than what is prescribed in those provisions.

16. The trial court was not wrong on sentence, as it applied the law as it was at the time. I shall not interfere with the sentence, to impose a harsher one on the appellant.

17. Overall, I find that the appeal herein does not have merit, for the reasons given above, and it is hereby dismissed. The conviction of the appellant is hereby affirmed, and the sentence imposed on him confirmed. Orders accordingly.

**DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 18TH DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Oye Ashioya, instructed by Ashioya & Company, Advocates for the appellant.

Mr. Antony Onanda, instructed by the Director of Public Prosecutions, for the respondent.