



REPUBLIC OF KENYA



**KENYA LAW**  
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**NKL v Republic (Criminal Appeal E002 of 2023)  
[2025] KEHC 12742 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12742 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL APPEAL E002 OF 2023  
JK NG'ARNG'AR, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**NKL ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence in Sexual Offence Case Number E029  
of 2022 by Hon. Wamae E. M in the Magistrate's Court in Bomet)*

**JUDGMENT**

1. The Appellant was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. The particulars of the charge were that on 13<sup>th</sup> April 2022 in Chepalungu Sub-County within Bomet County, he intentionally caused his penis to penetrate the vagina of MC, a child aged 7 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 on 13<sup>th</sup> April 2022 in Chepalungu Sub-County within Bomet County, he intentionally touched the vagina of MC, a child aged 7 years with his penis.
3. The Appellant pleaded not guilty to the charges before the trial court and a full hearing was conducted. The prosecution called six (6) witnesses in support of its case and closed their case. The Appellant gave sworn testimony and did not call any witness.
4. In a Judgment dated 8<sup>th</sup> February 2023, the trial court convicted the Appellant and sentenced the Appellant to serve life imprisonment.
5. Being aggrieved with the Judgment of the trial court, NKL through a home-made Petition of Appeal filed on 14<sup>th</sup> February 2023 appealed against his conviction and sentence.



6. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh and come to my own independent findings. See *Mark Ouiruri Mose vs Republic* (2013) eKLR.
7. I now proceed to consider the case before the trial court in summary and the parties' submissions of the Appeal in the succeeding paragraphs.

#### **The Respondent/ Prosecution's Case.**

8. It was the Prosecution's case that the Appellant defiled MC (PW1) on 13<sup>th</sup> April 2022. PW1 testified that on the material day, the Appellant who was her uncle went with her to a posho mill and on their way back, the Appellant defiled her in a bush.
9. Ian Kiprono Samoei (PW4) who was the clinical officer from Sigor Sub-County Hospital testified that he examined PW1 on 19<sup>th</sup> April and found that she had a tear on her labia region, a freshly broken hymen and blood stains around both labia. PW4 further testified that there was penetration based on the freshly broken hymen and blood cells and tears on the victim's genitalia.
10. Through their written submissions dated 4<sup>th</sup> December 2023, the Respondent submitted that they proved that the victim was aged 7 years old through the production of the Age Assessment Report. On the issue of penetration, the Respondent submitted that victim's oral testimony was clear and it was supported by independent medical evidence. That the medical officer (PW4) found a freshly broken hymen and tears on the victim's labia.
11. It was the Respondent's submission that the issue of identification was not in doubt. That the Appellant was the victim's uncle and neighbour. That the victim also positively identified him in court. It was the Respondent's further submission that the Appellant merely denied committing the offence and the issue of him being framed up was an afterthought. That their evidence was overwhelming and that the conviction and sentence was safe and proper respectively.

#### **The Accused/Appellant's case**

12. The Appellant (DW1) denied committing the offence. The Appellant testified that on the material day, he went to the posho mill with the victim (PW1) and when they returned home, they were in the company of three other people i.e. Chelangat, Naomi and Yegon and he dropped PW1 at her home at around 5.30 p.m. The Appellant further testified that he was later informed at 10 p.m. that he had defiled PW1.
13. By the time of writing this Judgement, the Appellant had not filed his written submissions.
14. I have gone through and given due consideration to the trial court's proceedings, the home-made Grounds of Appeal filed on 14<sup>th</sup> February 2023 and the Respondent's written submissions dated 4<sup>th</sup> December 2023. The following issues arise for my determination: -
  - i. Whether the Prosecution proved its case beyond reasonable doubt.
  - ii. Whether the Appellant's 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.
15. 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.



16. Regarding the age of the victim, 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.
17. The victim (PW1) testified that she was aged 7 years old. Ian Kiprono Samoei (PW4) who was the clinical officer produced an Age Assessment Report as P. Exh 1. I have looked at the Age Assessment Report and it indicated that PW1 was aged 7 years. Based on the contents of the Age Assessment Report and the victim's testimony, it is my finding that PW1 was aged 7 years old at the time of the commission of the offence.
18. On the issue of identification, it was an undisputed fact that the Appellant and the victim were well known to each other. The victim (PW1) testified that the Appellant was her uncle and neighbour. On the other hand, the Appellant testified that the victim was the daughter to his cousin. This to me was evidence of recognition. It is salient to note that both the victim (PW1) and the Appellant admitted to going to the posho mill together.
19. The victim also identified the Appellant in court. In the case of *Muiruri & Others vs Republic (2002) KLR 274*, the court held that: -

“.....We do not think that evidence will be rejected merely because it is dock identification evidence. The court might base a conviction on such evidence if satisfied that on the facts and circumstances of the case the evidence must be true and if prior thereto the court duly warns itself of the possible danger of mistaken identification.”
20. Flowing from the above, it is my finding therefore that the Appellant was positively identified as the perpetrator of the offence by the victim.
21. 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.
22. Penetration can be proved through the evidence of the victim corroborated by medical evidence. It should however be noted that if the medical evidence is insufficient, courts can convict solely on the evidence of a victim provided they believe the testimony of the victim and record such reasons.
23. In the instant case, I shall carefully evaluate the victim's testimony and the medical evidence tendered.
24. MC (PW1) testified that on the material day, as they headed back home with the Appellant from the posho mill, the Appellant dragged her to a bush, removed his trouser and defiled her. The victim testified that the Appellant touched her private parts and inserted his genitalia into her genitalia. When PW1 was cross examined, she reiterated that the Appellant defiled her.
25. Ian Kiprono Samoei (PW4) who was the clinical officer testified that he examined the victim on 19<sup>th</sup> April 2022. He testified that he found that the victim had a first-degree tear on her labia, a freshly broken hymen and blood stains on her labia. PW4 concluded that the victim (PW1) had been penetrated. He produced a P3 Form, treatment notes and lab results as P. Exh 3, P. Exh 4 and P. Exh 5 respectively. I have looked at the exhibits and the findings corroborate PW4's testimony.
26. The medical evidence corroborated the victim's testimony. I am inclined to accept the medical evidence and PW4's professional opinion that there had been penetration.



27. Based on the totality of the evidence before me, it is my finding that the Prosecution proved the age of the victim (PW1), the Appellant's positive identification and the victim's penetration. It is also my finding that Prosecution proved its case against the Appellant beyond reasonable doubt.
- ii. Whether the Appellant's defence placed doubt on the Prosecution's case.
28. The Appellant (DW1) denied committing the offence. He testified that he accompanied the victim (PW1) to the posho mill and when they were headed back home, they were joined by three people, Chelangat, Yegon and Naomi. The Appellant further testified that he dropped PW1 back home at 5,30 p.m. When the Appellant was cross examined, he testified that he did not have a peaceful relationship with the victim's family as NSC (PW2) did not like his wife living within the homestead. He further testified that he had a conflict with SKS (PW3).
29. Having gone through the Appellant's defence as a whole, it is my finding that it was a mere denial, shallow and an afterthought. His assertion that he had problems with the victim's family specifically with PW2 and PW3 were unfounded and clearly an afterthought. The Appellant had a chance to cross examine PW2 and PW3 on his alleged conflict with them but failed to do so. In summary, the Appellant's defence 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.
30. The penal section for this offence is found in section 8(2) of the *Sexual Offences Act* which states that: -
- A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life
31. Having gone through the trial court record and bore in mind the circumstances of the case, there is no reason exhibited for this court to interfere with the trial court's sentence. The sentence was lawful and commensurate to the offence.
32. In the end, I uphold both the conviction and the sentence as passed by the trial court. The Appeal is dismissed.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2025.**

.....

**Hon. JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

Appellant present in person

Koech for the Respondent

