



REPUBLIC OF KENYA



**Rono v Republic (Criminal Appeal E006 of 2024)
[2025] KEHC 13173 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL APPEAL E006 OF 2024
JK NG'ARNG'AR, J
SEPTEMBER 25, 2025**

BETWEEN

GEOFFREY KIPLANGAT RONO APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Sexual Offence Case Number
E048 of 2023 by Hon. Michuki 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[4] of the *Sexual Offences Act*. The particulars of the Charge were that on 22nd March 2023 at Kaplondon Village, Lelaitich Location in Bomet County, he intentionally caused his penis to penetrate the vagina of L.C, a child aged 16 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 22nd March 2023 at [particulars withheld] Village, Lelaitich Location in Bomet County, he intentionally touched the vagina of L.C, a child aged 16 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 four [4] witnesses in support of its case and the Appellant gave unsworn testimony and did not call any witness.
4. At the end of the trial, the trial court convicted the Appellant and sentenced him to serve 15 years' imprisonment.
5. Being aggrieved with the Judgment of the trial court, the Appellant, Geoffrey Kiplangat Rono through home-made Grounds of Appeal filed on 8th August 2024 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 conclusion.
7. I now proceed to summarily consider the case before the trial court and the parties' submissions in the present Appeal in the succeeding paragraphs.

The Prosecution's/Respondent's case.

8. It was the Prosecution's case that the Appellant defiled L.C [PW1]. PW1 testified that on the material day, the Appellant invited her for a meal in a nearby hotel. PW1 further testified that after the meal, the Appellant invited her to his house where they engaged in sexual intercourse. According to PW1, they had several sexual encounters with the Appellant and she became pregnant.
9. Ian Samoei [PW3] a clinical officer at Sigor Sub-County Hospital testified that he examined PW1 on 4th may 2023 and found that she had normal genitalia, no vaginal bleeding, a whitish vaginal discharge and a broken hymen. PW3 testified that PW1's pregnancy test was positive and he concluded that the pregnancy was a result of defilement.
10. PW3 testified that he also examined the Appellant on 26th July 2023 and found nothing significant to conclude that the Appellant was the perpetrator.
11. Through their written submissions dated 10th July 2025, the Respondent submitted that they proved the ingredient of penetration. That the victim's testimony that she was defiled and was pregnant was corroborated by the clinical officer's testimony.
12. It was the Respondent's submission that the victim was aged 16 years old. That the Age Assessment Report showed that she was aged under 18 years and was thus a minor. It was their further submission that the identity of the Appellant was proved beyond reasonable doubt. That the victim and the Appellant came from the same village and had several sexual encounters.
13. The Respondent submitted that the Appellant's defence did not sway the court in any way as it was a mere denial. That there was no reason for the Investigating Officer to frame him. The Respondent further submitted that the trial court did not err when it sentenced the Appellant to 15 years imprisonment. That the sentence was the minimum one as provided by the law.

Appellant's Case

14. The Appellant, Geoffrey Kiplangat Rono [DW1] denied committing the offence. DW1 testified that on the material day, he was in Nairobi where he stayed with his uncle and that he stayed in Nairobi until June 2023. DW1 further testified that he returned and continued his work as a boda boda rider.
15. It was DW1's testimony that the Investigating Officer [PW4] would often engage his services as a boda boda rider by sometimes borrowing his motorcycle or asking him to take his girlfriend to Olbutyo. It was DW1's further testimony that the Investigating Officer threatened and accused him of having a relationship with his girlfriend. That the Investigating Officer framed him up with this case.
16. Through his written submissions filed on 22nd May 2025, the Appellant submitted that the trial court proceedings were full of glaring contradictions and was full of lies by the victim [PW1] and the Investigating Officer [PW4]. That the Investigating Officer failed to bring Dennis who was the hotel owner to shed light on the case.
17. It was the Appellant's submission that the victim's age was not proved as no Birth Certificate was produced in court. That the Birth Certificate was the best evidence to determine the victim's age. It



was the Appellant's further submission that the clinical officer did not find anything to link him to the offence.

18. The Appellant submitted that there was insufficient proof of penetration.
19. I have gone through and considered the trial court's proceedings, the Grounds of Appeal filed on 8th August 2024, the Appellant's written submissions filed on 22nd May 2025 and the Respondent's submissions dated 10th July 2025. 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 just and fair.

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

20. 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.
21. 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.
22. In the present case, there was no Birth Certificate produced in the trial court. The victim [PW1] testified that she was born in May 2017. Ian Samoei [PW3] who was the clinical officer, testified that he conducted an Age Assessment and produced an Age Assessment Report as P. Exh 3. I have looked at the Report and it indicates that the victim was below 18 years of age. This created uncertainty in regards to the age of the victim. I however agree with the trial court that in the absence of a Birth Certificate, a parent's testimony regarding the age of their children is a more credible proof of age. I am also guided by the Court of Appeal in LOA v Republic [2020] KECA 927 [KLR] where it held: -

“ It is trite that the prosecution ought to prove the age of the victim either by direct testimony of the parent, guardian, or victim herself, birth certificate, medical assessment or by other expert means.....”
23. I shall rely on the victim's mother's testimony in regard to the victim's age. W.M. [PW2] testified that the victim was born in June 2006. It is my finding therefore that the victim [PW1] was aged 16 years old at the time of the commission of the offence.
24. With regard to the issue of identification, the victim [PW1] testified that she knew the Appellant as he used to hang out in their village's market centre. The victim also testified that they had several sexual encounters with the Appellant. When PW1 was cross examined, she reiterated that she knew the Appellant since February 2023 and had several sexual encounters.
25. I have looked at the Appellant's defence and he testified that the victim [PW1] used to live with a person called Chepkoech. This fact tallied with the victim's testimony that she lived with PC Chepkoech in her house.
26. From the above, it is evident to me that the Appellant and the victim [PW1] were not strangers to each other. The victim's assertion that they engaged in several sexual encounters was uncontroverted. Such several encounters could not happen between strangers. Further, the Appellant's knowledge of where



and whom the victim lived with fortified the fact that he knew the victim. The evidence of recognition as shown in this particular case was convincing and free from any doubt.

27. Flowing from the above, it is my finding that the Appellant was positively identified by the victim [PW1].
28. With regard 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.
29. 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.
30. In the instant case, I proceed to carefully evaluate the medical evidence and the victim's testimony.
31. On medical evidence, I have looked at the testimony of the clinical officer [PW3]. PW3 testified that he examined the victim [PW1] on 4th May 2023 and found that she had normal genitalia, no vaginal bleeding, a whitish vaginal discharge and a broken hymen. PW3 further stated that the victim was pregnant. I take issue with this evidence as it was carried out approximately two months after the commission of the offence. Noting the nature of the offence, the probative value of such evidence diminished with each passing day. In my view, this medical evidence was inconclusive and was of zero probative value in terms of proving penetration. I therefore disregard the medical evidence.
32. The above finding however is not fatal as the law allows the court to base a conviction solely on the testimony of the victim if the court is convinced and satisfied in the victim's truthfulness. Such testimony need not be corroborated. Section 124 of the [Evidence Act](#) provides: -

Notwithstanding the provisions of section 19 of the [Oaths and Statutory Declarations Act](#) [Cap. 15], where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:

Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth. [Emphasis mine]

33. I have keenly gone through the victim's evidence. She stated that they had several sexual encounters with the Appellant including the material day. PW1 explained to the trial court how the Appellant invited her into his house which had two rooms and had sex with her. Her testimony on the sexual intercourse was uncontroverted. I have also considered the Investigating Officer's testimony where he testified that he knew the Appellant and that his house had two rooms. I find these two testimonies corroborative in terms of describing the Appellant's house. I agree with the trial court that the victim's testimony was truthful and reliable. I have no reason to disbelieve the victim's testimony. It is my finding therefore that the element of penetration was proved.
34. Having proved all the ingredients of the offence [age, penetration], it is 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.

35. As already laid out earlier in this Judgement, the Appellant [DW1] denied defiling the victim [PW1]. That on the material day, he was away in Nairobi living with his uncle. DW1 further testified that the Investigating Officer [PW4] framed him because of an alleged affair with PW4's girlfriend.
36. I have considered the Appellant's defence and it is a mere denial. Firstly, he gave unsworn testimony which according to the law had zero probative value. Secondly, he did not call any witness to corroborate his assertion that he was away in Nairobi at the material time. Thirdly, the issue of being framed up was an afterthought. The Appellant did not bring up this issue when he cross examined the Investigating Officer [PW4] but only brought it up in his defence. After analysing the Appellant's defence as a whole, it is my finding that his defence was weak and did not create any doubt on the Prosecution's case which I have already found proven.

iii. Whether the Sentence preferred against the Appellant was severe.

37. The general principles upon which the first appellate court acts in regards to sentencing are now well settled. It has jurisdiction to interfere with sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the Court should not lose sight of the fact that in sentencing, the trial court exercises discretion and as long as the discretion is exercised judicially and not capriciously, the appellate court should be slow to interfere with that discretion. [See Peter Mbugua Kabui v Republic [2016] KECA 713 [KLR].
38. Sentencing serves multiple purposes as enumerated in the Sentencing Policy Guidelines 2023 which outline the objectives of sentencing at paragraph 1.3.1 as follows: -

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
 - ii. Deterrence.
 - iii. Rehabilitation.
 - iv. Restorative justice.
 - v. Community Protection.
 - vi. Denunciation.
 - vii. Reconciliation.
 - viii. Reintegration.
39. The penal section for this offence is found in section 8[4] of the *Sexual Offences Act* which states that: -
- A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.



40. 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.
41. 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 25TH DAY OF SEPTEMBER, 2025.

HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan [Court Assistants]

Koech for the Republic

N/A for the Appellant

Appellant: present in person

