



**Langat v Republic (Criminal Appeal E038 of 2022)
[2024] KEHC 5173 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E038 OF 2022
JR KARANJA, J
APRIL 18, 2024**

BETWEEN

WESLY LANGAT APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against conviction and sentence from a judgement dated 29th November 2022 in Criminal (S.O.) Case No. E065 of 2021 by Hon. A. Ajwang, SRM at Kericho, Chief Magistrate's Court)

JUDGMENT

1. The Appellant, Wesley Langat, appeared before the Senior Resident Magistrate at Kericho charged with defilement, contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) and in the alternative, with committing an indecent act with a child, Contrary to Section 11(1) of the [Sexual Offences Act](#).

It was alleged that on the 9th September 2021 within Kericho County, the Appellant defiled a girl aged three (3) years referred to as MC or that he committed an indecent act with the girl.

2. The Appellant after a full trial was convicted on the main count and sentenced to forty (40) years imprisonment. Not being satisfied with the outcome, he preferred this appeal on grounds set out in his petition of appeal in which his major complaint is that he was convicted on the basis of the prosecution evidence which was insufficient, uncorroborated and incapable of proving the ingredients of the charge beyond reasonable doubt.

The State Respondent opposed the appeal.

3. The hearing was by way of written submissions. Both sides filed their respective submissions which were given due consideration by this court.



The Appellant appeared in person while the Learned Prosecution Counsel, Mr. Ogutu, appeared for the state.

The duty of this court was to revisit the evidence and draw its own conclusion bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

4. Towards that end, the evidence presented by the prosecution through its four (4) witnesses (PW1 to PW4) was considered against the Appellant's statement in defence.

Basically, the evidence in its totality indicated that the main issue for determination was whether an act of penetration in terms of Section 8(1) of the *Sexual Offences Act* was committed against the Complainant child (known as "M.C.") and if so, whether the Accused/ Appellant was responsible for the offence.

5. The prosecution was thus required to establish and prove the material ingredients of the charge against the Appellant. Such ingredients include the age of the child and the act of penetration.

With regard to the age of the child, the Complainant's mother, BL (PW1), tendered a birth certificate (P. Ex 2) indicating that the child was born on 23rd June 2018, thereby placing her at the age of three (3) years or thereabout as at the material time of the offence.

6. The Complainant's age was therefore an undisputed fact and so, was the fact that an act of penetration was committed against the Complainant.

In any event, the Complainant's mother (PW1) indicated that the child was on the material date brought home while crying to a point that she could neither eat nor sleep and appeared to be in pain. On the following morning, the child could not walk and was instead crawling. She (PW1) examined the child and noted that she had excreted on herself and her thighs were swollen. She took the child to hospital while in the company of the Assistant Chief Wesley Mutai (PW2).

7. At the hospital, the child was medically examined by a Clinical Officer, Dickson Langat (PW3), who noted that an attempted act of penetration was committed against the child. That, the child was partially penetrated through her genital organ. A medical report P3 form (P. Ex 4) was completed and signed by the Clinical Officer to that effect.

8. Under Section 2 of the *Sexual Offences Act*, the term penetration denotes or means the partial or complete insertion of the genital organ of a person into the genital organ of another person.

It would therefore follow that the element of penetration, a vital component of the offence of defilement, was undisputedly established by the medical evidence of the Clinical Officer (PW3) thereby confirming the Complainant's mother (PW1) fear and suspicion that the Complainant had been defiled, hence her unusual and peculiar behavior after being brought back home while crying.

9. Having sufficiently and credibly established and proved that an act of penetration had been committed against the child Complainant, the crucial issue for determination was the identification of the Offender.

The Appellant was suspected and reported to the police through the chief (PW2) who received the report from the Complainant's mother (PW1) and her, neighbour Vincent Kipngeno Koech (PW4) who was also a member of the Local Community Policing Unit.

10. Apparently, the Police Officer who investigated the case and most likely preferred the present charge against the Appellant was not called as a witness or failed to heed summons to appear in court.



The Appellant's defence was essentially a denial of having been responsible for committing an act of penetration against the child Complainant. He said that he was a tractor driver and knew nothing about the charge which was false in so far as it was directed at him.

11. None of the prosecution witnesses saw the Appellant committing the offence against the Complainant Child. They were therefore not in a position to identify him as the offender other than merely suspecting him.

The suspicion, it would appear, was raised by the Complainant's mother (PW1) in as much as she was informed by one C and one A who were with the child that the child had been taken from them by Wesley (the Appellant) and was eventually brought back home by the Appellant while crying.

12. The Complainant's mother (PW1) indicated that she questioned the Appellant when he returned the child home and he told her that the child had fallen down and got stung by a "Mwiba" (thorn). He was an uncle to the child. Cynthia and Abigael were not availed as witnesses to confirm what the Complainant's mother stated in court.

13. The Chief (PW2) and the Complainant's mother neighbour (PW4) could not link the Appellant to the child. Their suspicion of him was clearly anchored on the suspicion raised by the Complainant's mother which suspicion was apparently not supported by other independent evidence. However, the suspicion, in this court's opinion was strong enough as circumstantial evidence of identification against the Appellant. This is because he did not dispute that he was with the child at one point before returning her to her home on the material date during the night.

14. While being returned home, the child was in distress. She was crying continuously such that she could not eat or sleep. The crying was an alarm bell and when her mother eventually examined her she noted that all was not well with the child and she took her to hospital where it was confirmed that the child had been defiled.

15. Since the Appellant was the last person to have custody of the child before he returned her to her mother and since it was discovered a few hours after her return that the child had been defiled, the inference that could be drawn from the state of affairs was that the child was most likely than not defiled by the Appellant, to the exclusion of any other person. The explanation he gave to the Complainant's mother that the child had fallen down and got pricked by a thorn was incompatible with the findings of the medical officer (PW3) and indeed, his innocence.

16. This court would thus find, as the trial court did, that the Appellant was positively identified as the person who committed an act of penetration against the Complainant, a child of tender years. His conviction by the trial court was therefore proper and lawful and is hereby upheld with the result that the Appellant's grounds of appeal in respect thereof are hereby overruled and dismissed.

17. As regards the sentence of forty (40) years imprisonment imposed upon the Appellant by the trial court, it was lawful and reasonable considering that Section 8(2) of the *Sexual Offences Act*; provides for a mandatory sentence of imprisonment for life. However, the Appellant was a first offender. He expressed remorse in his mitigation. This court therefore considers it fair and just to reduce the sentence to twenty (20) years imprisonment with the period spent in custody by the Appellant being taken into account in computation of the sentence pursuant to Section 333(2) of the *Criminal Procedure Code*. Otherwise, the appeal is substantially dismissed.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

**J. R. KARANJAH,
JUDGE**

