



**Cheruiyot v Republic (Criminal Appeal E005 of 2022)  
[2025] KECA 1485 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KECA 1485 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL E005 OF 2022  
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA  
SEPTEMBER 19, 2025**

**BETWEEN**

**LEONARD KIPYEGON CHERUIYOT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the judgment of the High Court of Kenya at Bomet  
(R.L. Korir, J.) dated 30th September 2021 in HCCRA No. E001 of 2020)*

**JUDGMENT**

1. The appellant, Leonard Kipyegon Cheruiyot, was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#) in Bomet Chief Magistrate's Court Criminal Case (SO) No. 70 of 2019. The particulars of the offence were that on 15<sup>th</sup> October 2019 at Bomet County, the appellant intentionally caused his penis to penetrate the vagina of SC, a child aged 7 years. He also faced an alternative count of committing an indecent act with a child contrary to section 11 of the [Sexual Offences Act](#). The particulars of the offence were that on the same day and place, the appellant intentionally caused his penis to touch the vagina of SC, a child aged 7 years.
2. The appellant was arraigned before the trial court. He pleaded not guilty to both counts. After a full trial, the appellant was convicted on the main charge and sentenced to life imprisonment. The appellant appealed before the Naivasha High Court in HCCRA No. E001 of 2020(R.L. Korir J). The first appellate court dismissed the appellant's appeal on conviction and sentence.
3. Dissatisfied with those findings, the appellant has preferred this appeal. He filed his notice of appeal dated 6<sup>th</sup> October 2021. He also filed undated supplementary grounds of appeal that raised four grounds disputing the findings of the learned judge. The grounds of appeal can be summarized as follows: that the first appellate court failed to find that he was not positively identified as the perpetrator of the offence to the required standard of proof; that the trial court failed to state the reasons why it was



satisfied with the evidence of the complainant in the absence of corroborative evidence as required by the provisions of section 124 of the *Evidence Act*; and that the Judge failed to appreciate that his arrest had no connection with the crime that he was charged with. For those reasons, the appellant prayed that his appeal be allowed, his conviction be quashed and his sentence be set aside.

4. The appeal was canvassed by way of written submissions on 14<sup>th</sup> May 2025. The appellant was in person, while the respondent was represented by Senior Assistant Director of Public Prosecution, Mr. Omutelema. The appellant's written submissions dated 13<sup>th</sup> May 2025 challenged the evidence that was adduced to prove penetration and the identification of the assailant. In his view, the evidence did not prove the two ingredients beyond a reasonable doubt. This is because the offence occurred at night when mistaken identity was highly probable. He argued that a child of tender years couldn't be defiled twice by an elderly man and then get the energy to run to a neighbour and fail to disclose to her what had happened to her. He further argued that the ingredient of penetration was not proved, as the evidence by the complainant and the medical evidence was not sufficient to prove the offence.
5. The appellant analyzed the evidence of PW1 and argued that it failed to meet the threshold set out in section 124 of the *Evidence Act*. For those reasons, he prayed that his conviction be quashed. He opined that the police ought to have conducted an identification parade to ascertain who the perpetrator of the offence was. He stated that the complainant did not know the name of the person who defiled her and she was not present when he was arrested by an irate mob. In addition, the appellant argued that the trial court did not state the reasons why it was satisfied with the evidence of the complainant as required under section 124 of the *Evidence Act*. Finally, the appellant submitted that he was arrested under unsatisfactory circumstances for being in the wrong place and at the wrong time. He argued that he was only arrested as he was within the vicinity of the area of the crime, yet that is the place he lived with his family. On those grounds, he prayed that his appeal be allowed.
6. The respondent opposed the appeal. It filed its written submissions, list of authorities and case digest, all dated 5<sup>th</sup> May 2025, to submit that all the ingredients to the offence of defilement, namely, the age of the complainant, penetration and identity of the perpetrator, were proved beyond reasonable doubt. Lastly, on the sentence meted out, the respondent argued that the same was lawful and in line with section 8 (2) of the *Sexual Offences Act*. The respondent urged this Court to dismiss the appeal, uphold the conviction and affirm the sentence.
7. We have considered the parties' rival written submissions, examined the record of appeal and analyzed the law. Our duty as a second appellate court is set out in section 361 of the Criminal Procedure Code. As a second appellate court, we can only consider matters of law. Furthermore, this Court cannot interfere with concurrent findings of fact by the two courts below, unless such findings are based on no evidence or on a misapprehension of the evidence or where the courts below are shown to have taken into account wrong principles in making their findings. [See *Chemagong v Republic* [1984] KLR 611].
8. The record before us captures the evidence as follows: 8-year- old SC PW1, a school going pupil at Nyanca Primary School testified that she was at home with her younger brother called K, sleeping on 15<sup>th</sup> October 2019. She then heard someone calling her. She acceded to the calls where she met the appellant. He removed her biker and .... "put me near the door and then did bad manners." She stated that it was not the first time she had seen the appellant, as she had previously seen him on the road. She said that at the time when she was defiled, there was moonlight and she was able to see the appellant. During the ordeal, the appellant covered her mouth to prevent her from screaming.
9. After he was done, the appellant ran away. In answer to a question in cross-examination, she stated... "I saw you when you left there was light from the moon. You looked back when you were running and



I saw you..” PW1 immediately ran to their neighbour, S. Sheila took her to her mother, KR, PW3 and told her what had just happened.

10. PW2 Joyce Kailel, was a neighbour to PW3 and the mother of the appellant. She testified that on 15<sup>th</sup> October 2019 at 9:40 p.m., the appellant ate supper and left. He did not return that night. The following day, she was informed that the complainant had been defiled.
11. PW3 testified that her daughter PW1 was born on 20<sup>th</sup> November 2012. On 15<sup>th</sup> October 2019 at 9:00 p.m. she left the house for a church meeting. Ten minutes later, she was informed that some people were looking for her. She met Joyce together with PW1. While crying, PW1 informed her that she had been defiled. On checking PW1, she noted bleeding in her private parts.
12. PW3 returned home with PW1 and took her to Tarakwa Dispensary the following day. They were then referred to Longisa County Referral Hospital, where PW1 was treated. The matter was then reported at Bomet Police Station where they were issued with a P3 form. PW3’s evidence was that PW1 told her that it was the appellant who defiled her. That PW1 described the appellant as having worn a black jacket with a beard. Her evidence was that they had never quarreled with the appellant and denied framing him with the offence.
13. PW4 Gilbert Kosgey testified that on 15<sup>th</sup> October 2019, he was at a crusade at 9:00 p.m. when he saw PW3 and Sheila at PW3’s home. He also met the appellant on the way. He was then informed that PW1 had been defiled. He later learned that the appellant had been arrested.
14. PW5 Kenneth Kiplagat informed the trial court that the appellant was like a son to him and his neighbour. On the fateful night, he met the appellant on the road just next to their land. They had a few pleasantries. He was later notified that the complainant had been defiled by the appellant.
15. PW6 PC Kitome Kipkemoi testified that on 15<sup>th</sup> October 2019 and 21<sup>st</sup> October 2019, he was informed of the offence by PW3, his sister in law. Come 21<sup>st</sup> October 2019, the appellant was arrested by members of the public who wanted to lynch him. PW6 rescued the appellant and escorted him to Bomet Police Station.
16. PW7 PC Irene Kemboi, the investigating officer testified that on 30<sup>th</sup> October 2019 at 3:00 p.m., he was on duty at Bomet Police Station when PW1 reported the offence together with PW3. The appellant had been arrested at Kamisa stage by an irate crowd. PW7 interrogated the witnesses, recorded witness statements, collected evidence and preferred charges against the appellant. She produced PW1’s clinic card revealing her date of birth and her torn biker.
17. PW8 Julius Magut, a clinical officer at Longisa County Referral Hospital examined PW1 on 16<sup>th</sup> October 2019. She was seven years old at the time she was receiving treatment. On observation, PW1 had bruises and lacerations on her left labia majora. There were several epithelial cells on her private parts. Her hymen was not intact. He then filled PW1’s P3 form dated 23<sup>rd</sup> October 2019 concluding that there was penetration. He also produced PW1’s treatment notes from Tarakwa Dispensary and the PRC form.
18. At the close of the prosecution’s case, the trial court formed the opinion that the prosecution had established a prima facie case against the appellant. He was placed on his defence. His unsworn testimony was that on 21<sup>st</sup> October 2019 at 3:08 p.m., he was at work as a boda-boda operator when he dropped a customer at Bomet Police Station. Suddenly, two police officers accosted him and placed him in the police cells. He was accused of defiling a minor, an offence he denied committing.
19. The appellant stated that PW3 had leased their land to herd cattle, to which he had objected and that PW3 warned that she would do something to him that he would regret. He reckoned that he had been



charged with the offence because PW3 warned him that she would do something to him that he would regret. He urged the trial court to consider that he had been framed. Finally, he maintained that he was at work on 15<sup>th</sup> October 2019 when the offence took place.

20. In this appeal, the main issue for determination is whether the first appellate court was correct in upholding the conviction and affirming the sentence of the trial court. For the prosecution to succeed in a claim for defilement, it must prove beyond reasonable doubt the age of the complainant, penetration and the positive identification of the perpetrator.
21. On the complainant's age, PW3, PW1's mother confirmed that she was seven years old at the time of the offence, having been born on 20<sup>th</sup> November 2012. PW7 corroborated this evidence by producing the minor's clinic card. The P3 form further confirmed that the minor was seven years old at the time of the offence. We therefore find that the age of the complainant was proved beyond reasonable doubt and shall not disturb that finding.
22. What of penetration? According to the medical evidence adduced by PW8, PW1 had bruises and lacerations on her left labia majora. There were several epithelial cells on her private parts. Her hymen was not intact. His medical opinion was that the injuries were consistent with penetration. We are satisfied from that medical evidence that penetration was proved beyond reasonable doubt in line with section 2 of the *Sexual Offences Act*.
23. The last ingredient is the identity of the assailant. PW1 was the sole eyewitness to this offence. Her evidence was that she was at home with her younger brother and asleep on 15<sup>th</sup> October 2019. The appellant then called her, and she opened the door. The appellant removed her biker. PW1 stated that the appellant: "put me near the door and then did bad manners." PW1 recognized him as the person whom he had seen before on the road. Further, she recognized him during the ordeal, as there was moonlight. She testified that the appellant covered her with a blanket to prevent her from screaming and defiled her twice. After he was done, the appellant ran away. He looked back while he was running away and she recognized him as there was moonlight.
24. It is trite that in criminal cases, the evidence of a single witness cannot sustain a conviction unless corroborated with other evidence. However, the proviso to section 124 of the *Evidence Act* gives an exception in sexual offences so long as the court is satisfied for reasons that shall be recorded in the proceedings, that the victim is telling the truth. We have looked at the record and note that PW1 gave a vivid description of what the appellant did to her. She was emphatic that he did bad manners to her, meaning that the appellant defiled her.  
  
She was able to recognize him with the help of the moonlight. She recognized him as the person he had seen on the road earlier in the day. Therefore, this was a case of recognition rather than identification. The appellant cross-examined PW1 and that did not dislodge her evidence.
25. We also agree with the two courts below that the appellant's defence was an afterthought. The evidence that there existed a land dispute between him and PW3 did not dislodge the prosecution's evidence. We have carefully considered the record and note that the trial magistrate analyzed the evidence that was adduced by the prosecution and the defence of the appellant. The trial magistrate recorded that after considering the totality of the evidence, she was satisfied that the evidence was sufficient to convict the appellant. In our considered view, the appellant's argument that section 124 of the *Evidence Act* was not complied with has no basis. Accordingly, we come to the inescapable conclusion that the concurrent findings of the two courts below were proper and the conviction of the appellant is safe.
26. The appellant was sentenced to life imprisonment under section 8 (2) of the *Sexual Offences Act*. This sentence was upheld by the High Court. Taking into account the decisions of the Supreme Court in



Republic v Joshua Gichuki Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and Republic v Manyeso [2025] KESC 16 (KLR), where mandatory sentences were affirmed to be lawful, we see no reason to disturb the findings on sentence.

27. In the circumstances, we find that the appeal on the conviction sentence lacks merit. Accordingly, the appeal is hereby dismissed in its entirety.

**DATED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCIArb.**

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**JUDGE OF APPEAL**

**G.V. ODUNGA**

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**JUDGE OF APPEAL**

**I certify that this is a True copy of the original**

**Signed**

**DEPUTY REGISTRAR**

