Muteti v Republic (Criminal Appeal E003 of 2024)
[2025] KEHC 14738 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14738 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

CRIMINAL APPEAL E003 OF 2024

KW KIARIE, J

OCTOBER 22, 2025

BETWEEN

JULIUS MUTUNGA MUTETI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the original conviction and sentence in S.O. Case No. E079 of 2021 of the Senior Principal Magistrate's Court at Makindu by Hon. B. N. Ireri–Senior Principal Magistrate)

JUDGMENT

1. Julius Mutunga Muteti, the appellant herein, was convicted of the offence of defilement of a girl contrary to section 8 (3) of the *Sexual Offences Act* No. 3 of 2006.

2. The particulars of the offence were that on unknown dates in January 2021 at Kathekani location, Kibwezi sub-county, within Makueni County, he intentionally caused his penis to penetrate the vagina of F.M., a child aged twelve years.

3. The appellant was sentenced to serve 20 years' imprisonment in person. He was aggrieved and filed this appeal. He raised the following grounds of appeal:

    a. The prosecution's case is replete with monumental inconsistencies and contradictions which would have attracted an acquittal verdict.

    b. The trial court erred both in law and fact by failing to conduct a holistic scrutiny of the whole evidence on record to base its conviction and sentence.

4. The state opposed the appeal through Mr. Victor Kazungu, learned counsel. He argued that the prosecution proved the case to the required standards and that the sentence imposed was appropriate.

5. This is a first appellate court. As expected, I have analyzed and reevaluated all the evidence presented before the lower court, and I have drawn my own conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of Okeno v Republic [1972] EA 32.

6. Section 8(1) of the *Sexual Offences Act* defines defilement in the following terms:

> " A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
>
> An offence of defilement, therefore, is established against an accused person when the prosecution has proved the following ingredients:
>
> a. That there was penetration of the complainant's genitalia;
>
> b. That the accused was the perpetrator; and
>
> c. The age of the complainant was below eighteen years.
>
> These ingredients were restated in Fappyton Mutuku Ngui v Republic [2012] eKLR as follows:
>
> Going by this definition of defilement, I agree with Mr. Mwenda on the issues which the court needs to determine. The first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child; and finally, whether the penetration was by the Appellant.
>
> These are the ingredients that the prosecution must prove against an accused person."

7. The copy of the birth certificate for M.M. (PW1) indicates that she was born on the 9th day of March 2009. As of January 2021, she was 11 years and 10 months. I am satisfied that her age was sufficiently established.

8. The issue of penetration cannot be laboured. The complainant, in her evidence, stated that the appellant had defiled her on several occasions. This resulted in her being pregnant.

9. Francis Nguma (PW3) is a clinical officer at Mtito Andei sub-county Hospital on January 9th 2021. She was found to be 17 weeks pregnant. The complainant delivered a child, and when the DNA examination was conducted, it was established that the appellant was the biological father of the complainant's baby.

10. Although the appellant denied any involvement in the offence, he conceded during his defence that he was not going to repeat the offence. The DNA report conclusively confirmed that he defiled the complainant.

11. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of Nillson v Republic [1970] E.A. 599, as follows:

> " The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James vRex(1950), 18 EACA 147, it is evident that the

Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewsity(1912) C.CA 28 T.LR 364."

12. Section 8 (3) of the *Sexual Offences Act* provides the sentence for the offence in the following terms:

> " A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years."

13. The appellant was sentenced to serve twenty years' imprisonment. This court has not been shown that the learned trial magistrate acted upon any incorrect principle or overlooked any material factor. I have no grounds to interfere with the sentence.

14. The appeal is without merit, and I therefore dismiss it.

DELIVERED AND SIGNED AT MAKUENI, THIS 22ND DAY OF OCTOBER 2025.

KIARIE WAWERU KIARIE

JUDGE