**Putunoi v Republic (Criminal Appeal E007 of 2024)**
**[2025] KEHC 13741 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13741 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NANYUKI**

**CRIMINAL APPEAL E007 OF 2024**

**AK NDUNG'U, J**

**OCTOBER 1, 2025**

**BETWEEN**

**JOSEPH PARANAPUNYE PUTUNOI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(From original Conviction and Sentence in Nanyuki CM Sexual Offences Case No E022 of 2023– B. Mararo, SPM)***

## JUDGMENT

1. The Appellant, Joseph Paranapunye Putunoi was convicted after trial of defilement contrary to Section 8(1) as read with Section 8 (2) of the *Sexual Offences Act*, No 3 of 2006. The particulars were that on 28/05/2023 at Makandura of Laikipia North Sub-county Laikipia County intentionally and unlawfully caused his penis to penetrate the vagina of RN a child aged 10 years. On 01/03/2024, he was sentenced to forty (40) years imprisonment.

2. Being dissatisfied with the conviction and the sentence, he filed the petition of appeal on 06/03/2024. The conviction and the sentence are being challenged on the following grounds;

    i. The learned magistrate erred by failing to note that the case was not proved beyond any reasonable doubt.

    ii. The learned magistrate erred by not appreciating that the alleged offence happened on 28/05/2023 but the OB was reported(sic) on 29/05/2023.

    iii. The learned magistrate erred by failing to note that there was no way PW1 stayed on 28/05/2023 from the time of the commission of the offence and then went to hospital on 29/05/2023 without bathing and washing clothes.

iv. The trial magistrate erred by failing to note that if there was penile penetration, the complainant's mother would not have delayed until the next day to take the child to hospital.

v. The trial magistrate erred by failing to note that the sentence was harsh, excessive and exorbitant.

3. The appeal was canvassed by way of written submissions. In his written submissions, he argued that the prosecution failed to prove its case beyond reasonable doubt since the prosecution presented the evidence of the minor and her mother and there was no other corroborating evidence nor witnesses who could have corroborated the victim's account. That their testimonies were single witness testimonies by the operation of the law. That the mother's testimony construed a narrative which was highly suspicious and it could not be ascertained whether she coached or injured her daughter to settle a grudge. That their testimonies could not be taken as gospel truth since the motive was lacking. He submitted that the case against him rested on his whereabout between 4:00pm and 6:00pm which he explained in his defence that he was at Jua Kali up to 6:30pm and the prosecution failed to rebut this assertion and the trial court disregarded his defence leading to a miscarriage of justice. That he was prejudiced by lack of legal representation and the fact that he was illiterate hence his right to a fair trial was violated.

4. In rejoinder, the Respondent's counsel submitted that the complainant's age was proved as an original birth certificate was produced as Pexhibit II. As to proof of penetration, he submitted that the complainant gave a sensory account of how she was defiled and she was detailed as to how the ordeal unfolded. PW2, the complainant's mother testified that the complainant informed her about the ordeal and she took her to hospital the following day. Complainant's evidence was also corroborated by PW4, the clinician who testified that there was inflammation on labia minora/majora with hymen freshly broken and presence of blood on complainant's genetalia hence there was defilement. PW4 also produced P3 and PRC forms as Pexhibit 1A and 1B respectively.

5. On the allegation that PW2 could have injured her daughter to settle a grudge, he submitted that there was no mention of a quarrel between the Appellant and PW2 during the trial. Further, there were no facts that the Appellant led that would have provided basis for an inference that the injuries were caused by PW2 to settle a quarrel. That PW3 produced a blood stained skirt as Exhibit 3A which cemented PW3's evidence that there was blood cells upon examination.

6. As to identification, he submitted that the complainant was well acquainted with the Appellant as she stated that she knew him from Makandura. PW2 also confirmed that she had left the Appellant with the complainant on the material day as she went to fetch firewood which suggests that he had an opportunity to commit the offence. The offence was also committed during the day. That his defence was rightfully rejected as he testified on the events surrounding his arrest and made no attempts to explain the events of 28/05/2023. That he adduced no evidence to controvert prosecution's case.

7. With respect to sentence, he submitted that the Appellant did not urge that in exercising the discretion on sentencing, the trial court's discretion was exercised injudiciously, or that the sentence was manifestly harsh, was illegal or the court failed to consider material factors. That Section 8(2) of the *Sexual Offences Act* provide for a minimum sentence of life imprisonment but he was sentenced to 40 years which was lenient. He urged the court to enhance the sentence to life imprisonment as the law provides within the court's powers as provided under Section 354(3b) of the *Criminal Procedure Code*.

8. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. See *Okeno v Republic* [1972] EA 32.

9. I have therefore considered the submissions and the authorities relied by the parties. I have also read through the record of the trial court in order to evaluate all the evidence placed there and arrive at my own conclusions regarding the same. I have borne in mind however, that I neither saw nor heard the witnesses myself, and I have given due allowance for that fact.

10. The evidence before the trial court was as follows. PW1 the complainant in her unsworn testimony testified that she was at class one at (particulars withheld) primary school. She testified that on 28/05/2023, the Appellant raped her. That she knew him from Mukandura. He told her he teaches her(sic). He closed the door, removed her clothes and raped her. They were on the bed. That she had a black skirt and he lifted her leg and did bad things to her. That he did it where she 'cucu'. He had a condom which he put it while in their house. He did bad things using his thing that he uses to 'cucu'. He left and told her not to say and that he would bring her magumu. She informed her mother who informed the elders. That she felt pain and they went to hospital.

11. PW2, complainant's mother testified that on the material day while at home, the appellant went to their place and went to her bed. She offered him food but he refused. She told the complainant to close the door if the Appellant went out. They went to collect firewood and when they returned, the complainant informed her that the Appellant called her to teach her. He chased the other children and closed the door and took her to the bed. He removed her clothes and raped her. That she removed her skirt and raped her and wiped her with the skirt. That she was locked in the house and the other children saw what had happened. On the following day, she went to the chief who told her to take the child to hospital and Appellant's father told her to take the child to Naibor and a letter was written referring her to Nanyuki Referral hospital. That the complainant had bathed and changed clothes and she gave the police the black skirt and panties she was wearing. That the Appellant was arrested at Jua kali as he fled. Appellant was taken to her home to identify him.

12. On cross examination, she testified that she left him in her house sleeping as he said he was tired. They left at 4:00pm and returned at 6:00pm. It was late and she was confused. She did not report to the police. Naibor dispensary was near. That he had gone there severally. That she was not selling alcohol.

13. On re-examination, she testified that she did not go to the chief/ police on that day as it was at night and she was confused. She went to the chief the next day and then to hospital. She denied selling alcohol.

14. PW3 the investigating officer testified that she interrogated the complainant who informed her that she was playing with other children and her mother had gone to collect firewood. The Appellant was sleeping in the house and he called her and forced her to lie on a mattress and proceeded to defile her and wiped himself with her clothes. She tried to scream but he covered her mouth. That he had promised to buy her mandazi. When her mother returned, she told her what had happened and she reported to the chief on the next day and took the child to hospital. She produced a blood stained skirt as Pexhibit 3A, one black trouser as Pexhibit 3B and a birth certificate as Pexhibit II. She testified that the Appellant was HIV positive.

15. She testified on cross examination that he was in the house when PW2 went to collect firewood.

16. PW4, the clinical officer produced the P3 and PRC forms on behalf of his colleague Fidelis Mbugua who was on leave. He testified that he had worked with her for five years and was declared competent. He testified that on examination, there was inflammation on labia minora/majora tender on examination, hymen was freshly broken, no discharge, PITC was negative, EDRM was negative, epithelial cells were seen on high vaginal swab and red blood cells were seen. The conclusion was that the child was defiled. He produced the P3 form as Pexhibit 1A, PRC form as Pexhibit 1B and referral from Naibor as Pexhibit 1C.

17. On cross examination, he testified that there are various ways hymen can be broken. They hymen was freshly broken. That he was HIV positive and the child was given prophylaxis to prevent HIV. That there was penile penetration.

18. In his unsworn testimony, the Appellant testified that on 29/05/2023, he went to Jua Kali to work. At the site, he found that there were no fundis so he went to Jua Kali to try get a lorry where he stayed until 6:30am. He saw a police car ahead of him. There was a raid and he was put in the car. He inquired and he was told he would know ahead. The car went to the complainant's house, then to Jua Kali and police station. He was taken to hospital and to the court where charges were read about things he did not know.

19. The issue for determination is whether the case against the Appellant was proved to the required threshold in law and thus rendering the conviction proper and if in the affirmative, whether the sentence meted out was legal and appropriate in the circumstances.

20. It is trite that for the charge of defilement to stand, the Prosecution must prove the age of the victim (must be a minor), that there was penetration and a clear identification of the perpetrator. These ingredients are well set out under Section 8(1) of the *Sexual Offences Act* No. 3 2006.

21. The importance of prove of age in a sexual offense was emphasized in Kaingu Kasomo vs. Republic, Criminal Appeal No. 504 of 2010 (UR), where the Court of Appeal stated that:

> " Age of the victim of sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim."

22. In the present appeal, the complainant's age is not disputed. Her birth certificate was produced by PW3, the investigating officer. Her age places her in the bracket of a victim of 11 years and below.

23. As regards penetration, PW1 and PW2 confirmed that the Appellant was left at home with PW1 when PW2 went to fetch firewood. PW1 gave a graphic narration of the incident. She told the court how the Appellant placed her on a bed, lifted her dress and inserted his "cucu" into her "cucu" the thing used for urinating. She said she felt pain but could not scream as the Appellant held her mouth. The Appellant told her not to tell anyone promising to bring her "magumu'.

24. PW1 reported the ordeal to PW2 who reported the matter and took the complainant to hospital the next day. The examination at the hospital revealed that the complainant had inflammation of the labia minora and labia majora with her hymen freshly broken. Red blood cells were seen on the genetalia. PW4, the medic, produced a P3 Form, PRC Form and a Refferal Form from Naibor Dispensary. In addition, PW3, the investigating officer produced a blood stained skirt in evidence as further support of the defilement.

25. The evidence on penetration is from a reading of the witness accounts and the documents produced watertight. Am satisfied beyond any shadow of doubt that penetration of the complainants genetalia was proved.

26. Was the Appellant identified as the perpetrator of the act? The evidence on record is that PW2 had left the complainant with the Appellant as she went to fetch firewood. In her evidence PW1 stated she knew the Appellant. Notably the offence was committed during the day and therefore the circumstances of identification, indeed recognition were not difficult.

27. It is trite law that the Appellant bore no burden to prove his innocence. The duty was on the prosecution to discharge the burden of proof. Confronted by the prosecution evidence, the Appellant gave a narration of his random arrest and charging. He blames his predicament on an alleged grudge with PW2 whom he accuses of injuring the complainant in order to frame him. The genesis and particulars of the said grudge are not given.

28. I have considered this line of defence. It's a defence of the weakest nature which falls far short of displacing the prosecution evidence. It is indeed a far-fetched attempt by the Appellant to evade the consequences of his act. I do not believe the Appellant on the allegation that the mother hurt her own child in the manner described in the medical reports to get even with him when no evidence of such grudge is offered. In light of the evidence on record, the defence put up by the Appellant cannot possibly be true. He was the perpetrator of the heinous Act.

29. On sentence, the Appellant challenges the sentence of 40 years imprisonment meted out on him as harsh, excessive and exorbitant.

30. Section 8(2) *Sexual Offences Act* provides: -

> " 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. The Appellant was sentenced to 40 years imprisonment. The sentence was illegal given the provision of Section 8(2) of the *Sexual Offences Act* and he ought to have been sentenced to life imprisonment. Indeed, the prosecution has pitched for the enhancement of the sentence to life imprisonment.

32. The Supreme Court in its decision in Petition No. E018 of 2023, *Republic v Joshua Gichuki Mwangi & Others* was emphatic that the sentences prescribed under the *Sexual Offences Act* remain legal, lawful and valid until such a time when the said Act will be repealed. In its own words, the court held as hereunder;

> "...the sentence imposed by the trial court against the Respondent and affirmed by the first appellate court was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act* remains valid. We reiterate that the Court of Appeal had no jurisdiction to interfere with that sentence."

33. In the circumstances the order that would commend itself to me is for the enhancement of the sentence herein to one of life imprisonment as sought by the prosecution. I will be reluctant so to do in view of the fact that the Appellant was not served with a Notice of Enhancement to enable him give a rejoinder and in the premises he would stand prejudiced.

34. With the result that the appeal herein lacks merit on all fronts and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF OCTOBER, 2025.**

**A.K. NDUNG'U**

**JUDGE**