



Republic v Hussein alias Fahim Pilipili alias Bampiri Junior (Sexual Offence E001 of 2025) [2025] KEMC 207 (KLR) (4 September 2025) (Judgment)

Neutral citation: [2025] KEMC 207 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
SEXUAL OFFENCE E001 OF 2025
FM MULAMA, RM
SEPTEMBER 4, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

**FAHIM HUSSEIN ALIAS FAHIM PILIPILI ALIAS BAMPIRI
JUNIOR ACCUSED**

JUDGMENT

A. Introduction.

1. Fahim Hussein alias Fahim Pilipili alias Bampiri Junior is charged with defilement contrary to section 8(1) as read as section 8(4) of the *Sexual Offences Act*. He is also charged with the alternative count of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*.
2. The particulars were that on the 19th day of April 2025 at around 2200hours at (particulars withheld) in Lamu East sub county the accused intentionally and unlawfully caused his penis to penetrate the anus of OAY a child aged 17 years.
3. In the alternative count, the particulars were that on the said, time and place the accused unlawfully and intentionally touched with his penis the anus of OAY a child aged 17 years.
4. 5 witnesses were called by the prosecution whereas on the other hand the defence, the accused gave sworn evidence after being found to have a case to answer and never called any other witnesses in his defence.
5. In this judgment I have considered the testimonies of both sides and the exhibits produced.



The Prosecution's Case.

6. It is the prosecution's case through the victim PW 2 that on the material day on his way home from tuition met the accused on the road and the accused person asked him to have anal sex with him then he will give him money but the accused ended up cheating him as it shall be seen shortly.
7. The accused then led the victim to a nearby madrassa, opened the door and they climbed upto the 3rd floor of that building. The accused then placed a mat on the floor, undressed the victim, undressed himself and took his penis and inserted into the anus of the victim.
8. It was his evidence that upon insertion of the penis into his anus he felt pain but the accused continued until he ejaculated and after he was done, he asked the victim to dress up and go home to which the victim did.
9. After an hour or so of the ordeal the victim went home and the mother (PW 3) became furious and sort to know where he was from and when he told her that he was from tuition she became suspicious and did not believe him and soon thereafter she realized some paint on his hair and hands and also sought to know where he had gotten them from but the victim still refused to disclose where he was from. PW 3 then became violent with him but still he could not disclose where he was from.
10. PW 3 then resorted to calling her relatives to wit Hambari, Tima and Amiri who is an uncle to the victim and also a police officer. They all came to their home but still the victim was tight lipped. Amiri then took the victim to a secluded place and the victim told him all that had transpired. They then went to report the matter to the police and he was referred to hospital for examination and treatment. He identified the accused as the person who defiled him.
11. The accused did very little in cross examination to challenge the evidence by the victim. In the brief cross examination the victim stated that they met on the road and that the accused had the key to the madrassa where the incident happened.
12. PW 3 the victim's mother on her part largely corroborated the evidence of the victim on the happenings that transpired after the victim arrived home at around 2300hours. She produced the birth certificate of the victim which showed the date of birth as 2/7/2008.
13. PW 1 the examining doctor confirmed to have seen the patient(victim) and filled in the P3 as well as the treatment notes. It was his evidence that the patient complained of having rectal pain having been defiled by a person well known to him.
14. Upon examination PW 1 noted an anal tear at 6 O'clock position and observed that the sphincter muscle was moderately loose and not normal and he conducted HIV test which turned out negative and administered drugs to him to reduce the pain.
15. It was further his testimony that the P3 was filled by him and it basically mirrored what was in the treatment notes and added that in his view the probable type of weapon used was a penis and the estimated age of injury was 72 to 96 hours. He produced the P3 and the treatment notes as exhibits. He was not cross examined by the accused person.
16. PW 4 was the Arresting Officer and was not cross examined and on the other hand PW 5 the Investigating Officer was also not cross examined by the accused.



Defence Case

17. The accused in his sworn testimony while denying the charges and/or any wrong doing on his part stated that on the material date he was at home alone locked up in the house and watching television. He admitted to knowing the victim and that they are cousins.
18. That whilst in the house, he heard the complainant being beaten by his uncles and in the process of being beaten he heard the victim call out or mention one Baby Zoo. Soon thereafter his uncle came and took him from the house that he locked himself in and they accompanied the victim to the place the victim had indicated that he had gotten the paint on his head and hands from and when they arrived the accused told his uncle to release him to go back home as he did not want to involve himself in the matter and he left and went back home.
19. It was his evidence that PW 3 has a grudge on him and hence this case and reiterated that he never met the victim on the road on that particular night.
20. On cross examination by the DPP he insisted that he was alone and home and no one can confirm that averment and that he never asked the victim about Baby Zoo when he testified.

B. Issue for Determination.

21. The following issue is in my view for determination in this matter;
 - a. Whether the offence of defilement was proven to the required standard.

C. Analysis and Determination.

Whether all the 3 Ingredients to Prove Defilement Were Proved Beyond Reasonable Doubt.

22. In the case of *Dominic Kibet Mwareng v Republic* [2013] eKLR the High Court observed thus:

“The critical ingredients forming the offence of defilement are; the age of the complainant, proof of penetration and positive identification of the assailant”.
23. Similarly, in the case of *CWK v Republic* [2015] eKLR, Kimaru J (as he then was) held that for the prosecution to sustain the charge of defilement, the prosecution must establish penetration, the perpetrator of the offence and the age of the victim.
24. In the case of *George Opondo Olunga vs Republic* [2016] eKLR the court held on appeal that each of the 3 ingredients named above must be proved for a conviction to ensue.
25. Section 8(1) of the *Sexual Offences Act* provides as follows:

“8.

 - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (2) 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.
 - (3) 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.

- (4) 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.
- (5) It is a defence to a charge under this section if -
 - (a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and
 - (b) the accused reasonably believed that the child was over the age of eighteen years.
- (6) The belief referred to in subsection (5) (b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.
- (7) Where the person charged with an offence under this *Act* is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the *Borstal Institutions Act* and the *Children's Act*.
- (8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees."

26. The first element is age. The importance of proving age in a sexual offence case cannot be gainsaid. In the case of *Kaingu Kasomo vs Republic*, Criminal appeal No. 504 of 2010, the Court of Appeal stated as follows;

“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.”

27. In this quest a Birth Certificate was produced as Pexh 3. It belongs to the victim and shows that she was born on 2/7/2008. The incident happened on 19th April 2025. It therefore follows that by the time the incident happened he was 17 years and some months. His age was thus proved beyond reasonable doubt and for all intents and purposes the victim is a child. Element number one is proved to the required standards.

28. The second ingredient is penetration. Penetration is defined under Section 2 of the *Sexual Offences Act* as follows:

“The partial or complete insertion of the genital organ of a person into the genital organs of another person.”



29. Penetration is ordinarily to be proved through the evidence of the victim corroborated by medical evidence and in other circumstances through the sole evidence of a child and this is governed by section 124 of the *Evidence Act*.
30. In *Bassita Hussein v Uganda*, Criminal Appeal No. 35 of 1995, the Supreme Court of Uganda held as follows:

“The act of sexual Intercourse or penetration may be proved by direct or circumstantial evidence and corroborated by medical evidence or other evidence. Though desirable, it is not a hard and fast rule that the victim’s evidence must always be adduced in every case of Defilement to prove sexual intercourse or penetration. Whatever evidence the Prosecution may wish to adduce to prove its case, such evidence must be such that it is sufficient to prove the case beyond reasonable doubt”
31. The victim told the court that on the material day the accused waited for him on the road and told him to have anal sex with him for money and thereafter led him to the madrassa that the accused had keys to, opened and led him to the third floor, undressed him, placed a mat on the floor and using his penis penetrated his anus and had intercourse until he ejaculated in him.
32. Upon examination, PW 1 confirmed to have seen a tear at the anus at 6 O’clock position and this was further corroborated by the fact that the victim complained of rectal pain when he was being interrogated.
33. This piece of evidence was not challenged by the accused whatsoever in cross examination. The treatment notes were produced as Pexh 1.
34. Further the P3 which basically mirrors what was captured in the treatment notes opines that the probable type of weapon used was a penis going by the history that was given to him by the victim and that the age of the injury was between 72 to 96 hours. This is corroborated by the fact that the incident is said to have occurred on 19/4/2025 and the victim was taken to hospital on 22/4/2025. P3 was produced as Pexh 2
35. Based on the testimony of PW1 and the medical documents produced as Pexh 1 and 2 and given the fact that the evidence was not controverted, it is the finding of this court and I so hold that penetration was proved to the required standards.
36. The last ingredient is identification. In this ingredient the evidence of the victim is very crucial. The victim in this case acknowledged knowing the accused and further the accused admitted to be a cousin to the victim.
37. It was the evidence of the victim that on the material date and time the accused waited for the victim on his way home from tuition and asked for anal sex from him and in return he would give him some money. Sadly, that was not to be. After the accused ejaculated, he asked the victim to dress up and go home. He was not given any money.
38. Did he then in the circumstances identify the accused as the perpetrator? It is not in doubt that the incident happened at night and secondly it is been admitted by PW 3 and the accused that the victim and the accused are cousins. This in my view is sufficient prove of identification.
39. Furthermore, the accused never challenged the fact that the victim indicated that he promised to pay him some money in exchange for anal sex. The best he did was to deny being at the scene but never called any independent witness to corroborate his side of the story. The uncle who came and removed



him from the house would have been a key witness to prove that indeed the accused had locked himself up in the house and watching tv.

40. Given the fact that the accused and the victim are not only cousins but neighbours, I have no doubt in my mind that the victim positively identified the accused as the perpetrator. Further it was the victim's testimony that when they got to the scene of the horrific ordeal, there was electricity light and the victim was able to see the accused place a mat on the floor for him to lie or bend on as the act was being done. He was able to identify the accused as the one who undressed him and was able to see that all of them were fully naked by the aid of the electricity light.
41. With all that I have no doubt in my mind that the accused was positively identified and I find and hold in similar terms.
42. Having taken into consideration the prosecution evidence in toto as well as the accused person's defence, I find that no reasonable doubt exists against the contention that the accused person committed the offence on 19/4/2025.

D. Conclusion and Disposition.

43. To this end therefore the charge of defilement contrary to section 8(1) as read with 8(4) of the *Sexual Offences Act* has been proved to the required standards.
44. As the glove fits, I must, as I hereby do, convict the accused person accordingly. Having convicted the accused person on the main count of defilement, I make no finding on the alternative charge of committing an indecent act with a child contrary to section 11(A) of the *Sexual Offences Act*.
45. It is so decreed.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS (FAZA MOBILE COURT) THIS 4TH DAY OF SEPTEMBER, 2025.

F. M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Ahmed Omar for DPP (virtually).

Court Assistant:- Vivian Wangui Wambui.

Fahim Hussein alias Fahim Pilipili alias Bampiri Junior

