



REPUBLIC OF KENYA



**KENYA LAW**  
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**Masika v Republic (Criminal Appeal E017 of 2023)  
[2025] KEHC 14887 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14887 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E017 OF 2023  
KW KIARIE, J  
OCTOBER 23, 2025**

**BETWEEN**

**PETER MUMO MASIKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E021 of 2022 of the  
Chief Magistrate's Court at Makueni by Hon. E. Kemei-Resident Magistrate)*

**JUDGMENT**

1. Peter Mumo Masika, 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 the 21<sup>st</sup> day of July 2022 at Makutano village, Kathonzweni sub-county, within Makueni County, he intentionally caused his penis to penetrate the vagina of C. M. K., a child around twelve years.
3. The appellant was sentenced to serve 15 years' imprisonment in person. He was aggrieved and filed this appeal. He raised the following grounds of appeal:
  - a. The evidence did not prove the case to the required standards.
  - b. The appellant was not satisfied with the sentence which was imposed.
4. The state challenged the appeal through M/s Omollo Vera, the learned counsel. She argued that the prosecution provided sufficient evidence and that the sentence given 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 the 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 complainant testified that she was born on 15 May 2010 and stated her age as 12 years. Her age was assessed as 12 years on 28 July 2022. Therefore, her age was verified.
8. The complainant testified that on her way home, she encountered a male stranger who grabbed her and knocked her to the ground. He removed her clothes, and when she screamed, he threatened her with the knife he had. He undressed her and violated her. He left her when she told him she was going to report it to her mother. She observed that he was dark and had a scar near the left ear.
9. J.M.Y (PW2) is the complainant's mother. Her evidence was that when the complainant arrived home from school, she threw her bag down and went behind the house, where she was crying. When she enquired why she was crying, she said a stranger had defiled her. She described him as dark and said he had a scar near the left ear.
10. DMK (PW3), in his evidence, confirmed that the complainant described her attacker as dark and stated he had a scar near his left ear.
11. Jackson Nzivo (PW5), a clinical officer, testified that he examined the complainant and completed her P3 form on 21 July 2022. He observed that she had multiple thigh lacerations, bruising on the labia minora, and a broken hymen. He concluded that there was penetration and that the injuries on the thighs indicated a struggle.



12. Peter Mumo Masika, the appellant, denied involvement in the offence. He contended that he was at Makueni. When an accused raises an alibi defence, they do not assume any burden to prove that it is the truth. This was stated in the case of *Kiarie v Republic* [1984] KLR, where the Court of Appeal held:

“An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.”

In the instant case, after analyzing the evidence on record, I find that the complainant identified her assailant. During cross-examination, he acknowledged that he had had the scar behind the ear for 17 years.

13. I find that the conviction was based on watertight evidence on record.

14. Section 8 (3) of the *Sexual Offences Act* provides:

“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.”

15. 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 v. REX* (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. Shershewcity* (1912) C.CA 28 T.LR 364.”

16. The appellant has not provided sufficient reasons to demonstrate that the learned trial magistrate acted upon some incorrect principle or overlooked some material factor. He received a sentence that was below the minimum prescribed. I have no basis for interfering with the sentence.

17. The appeal is therefore dismissed.

**DELIVERED AND SIGNED AT MAKUENI, THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**KIARIE WAWERU KIARIE**

**JUDGE**

