



**Muli v Republic (Criminal Appeal E056 of 2023)
[2025] KEHC 14779 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E056 OF 2023
KW KIARIE, J
OCTOBER 23, 2025**

BETWEEN

PETER MWEMA MULI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E047 of 2020 of the Senior Principal Magistrate's Court at Makindu by Hon. J. D. Karani—Senior Resident Magistrate)

JUDGMENT

1. Peter Mwema Muli, the appellant herein, was convicted of the offence of defilement contrary to section 8 (2) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence were that on the 3rd day of May 2021, at [Particulars Withheld] in Nzau sub-county within Makueni County, he intentionally caused his penis to penetrate the anus of S.M.K., a child aged 10 years.
3. The appellant was sentenced to serve 20 years' imprisonment. He has appealed against both conviction and sentence. He was in person. He raised the following grounds of appeal:
 - a. The learned magistrate erred in law and fact when he convicted the appellant on the prosecution's evidence, which was shallow and did not meet the threshold standard of beyond a reasonable doubt as required in a criminal case.
 - b. The learned trial magistrate again erred in law and fact by not observing that the voir dire examination was not properly conducted since there was no finding that the complainant, PW 2, understood the importance of giving evidence on oath, and it was apparent that he was coached on what to say.



- c. The learned trial magistrate further erred in law and fact by relying on the prosecution's evidence, which was crammed with contradictions and inconsistencies
 - d. The learned trial magistrate erred in both law and fact by failing to observe the unnecessary, unexplained, and suspicious delay by the investigation officer, PW 3, to appear in court. It was not until the appellant complained and sought the court's intervention that the repeated failure of the PW3 investigation officer to appear before the court occasioned his unwarranted suffering in custody.
 - e. The learned trial magistrate erred in both law and fact by failing to consider the varying dates of when the complainant, PW 2, was taken to the hospital, which raised eyebrows even to the clinical officer, PW 4, where the outpatient card indicated that the complaint reported three weeks (28/5/2021) after the occurrence of the incident.
 - f. The learned trial magistrate erred in both law and fact by failing to pay attention to the suspicious manner in which the instant case was taken around a chain of police stations, which clearly shows there was something fishy.
 - g. The trial court erred in law and fact by failing to call critical witnesses.
 - h. The trial magistrate erred in law and fact by holding that the prosecution had proved its case beyond a reasonable doubt without supporting evidence and in view of the unresolved contradiction in the prosecution's case.
4. The state did not file any grounds of opposition or submissions.
 5. This court is the first appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses testify. Therefore, I will follow the well-known case of *Okeno vs Republic* [1972] E. A 32 to guide my decision-making process.
 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 victim must be below eighteen years old.

This position was echoed in the case of *Fappyton Mutuku Ngui vs Republic* [2012] eKLR when Joel Ngugi J. said:

Going by this definition of defilement, I agree with Mr. Mwenda on the issues 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. A copy of the complainant's certificate of birth was produced as an exhibit. It states that he was born on April 17, 2011. As of May 3, 2021, he was 10 years old. The victim's age was proven to meet the required standards.
8. S.M.K. (PW1) testified that the appellant found him at home alone. He grabbed his hand and dragged him to a bush. He covered his mouth, removed both their trousers and made the complainant lie on his stomach. He then sodomised him. He warned him of dire consequences if he were to report. He, however, rushed and reported to his grandmother, who in turn reported to the chief, who was supervising road construction near her gate.
9. A.M.M.(PW2) is the complainant's grandmother. Her evidence was that after the complainant went to her crying and reported the incident to her, she took him to the house and, upon checking his anal area, confirmed the report. She took him to the hospital and later reported to the police.
10. Maua Mutua (PW4) examined the complainant and found a bruise on the external anal orifice. The medical evidence supported the complainant's account.
11. Peter Mwema Muli, the appellant, denied committing the offence. He argued in his grounds of appeal that the complainant sought medical attention on 28 May 2021. While true, this was for a different issue unrelated to the charge. He was vomiting, which explains why he sought treatment on that date. There is no contradiction with Maua Mutua (PW4); his testimony clearly shows when he was seen for the matter that led to this case.
12. From the foregoing, I find that the conviction was based on the evidence on record.
13. 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.
14. 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 vs 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 Vs. 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 vs Shershewcity* (1912) C.CA 28 T.L.R 364.
15. 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.
16. 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.



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

DELIVERED AND SIGNED AT MAKUENI, THIS 23RD DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE

