



**AOO v Republic (Criminal Appeal E061 of 2023)
[2025] KEHC 15180 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL E061 OF 2023
JK NG'ARNG'AR, J
OCTOBER 28, 2025**

BETWEEN

AOO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Ogembo (C.N. Sindani, PM) delivered on 22nd February 2023 in Criminal Case (SO) No. E013 of 2022)

JUDGMENT

1. AOO was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the *Sexual Offences Act*. The particulars of the offence were that on diverse dates between 19th December 2021 and 22nd December 2021 at [Particulars Withheld] village, Marongo location within Kisii County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of DNM, a child aged 16 years. Alternatively, the appellant was charged with the offence of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act*. The particulars of the offence were that on the same date and in the same place, the appellant intentionally and unlawfully touched the vagina of DNM, a child aged 16 years with his penis.
2. When the appellant was arraigned before the trial court, he pleaded not guilty to the main charge and the alternative charge. After a full trial, the appellant was convicted on the main charge and sentenced to serve 15 years imprisonment. It is those findings that have precipitated the present appeal.
3. The appellant filed an undated petition of appeal raising 7 grounds impugning the findings of the trial magistrate. He beseeched that he was remorseful for committing the offence. He urged this court to take into account that he was a first offender, the first born in the family, had since been rehabilitated and had the desire to complete his secondary education upon being released from prison. He further



promised to be a law-abiding citizen and not engage in any further crime. For those reasons, the appellant prayed that his sentence be reduced to a lesser one.

4. The appeal was heard on 10th September 2025 by way of written submissions. The appellant filed his written submissions dated 9th September 2025 through his counsel Bwondika & Company Advocates. The appellant cited several decisions of the court to urge this court to grant him a lenient sentence.
5. The respondent opposed the appeal. It filed written submissions dated 20th August 2025 through Prosecution Counsel Lereiya Fridah Sepetian. It submitted that all the ingredients to the offence of defilement were proved beyond reasonable doubt. Furthermore, the sentence meted out was appropriate and lawful. For those reasons, the respondent urged this court to dismiss the present appeal.
6. I have considered the submissions, examined the record of appeal and analyzed the law. As a first appellate court, my bounden duty is to re-examine, re-consider and re-analyze the evidence tendered afresh while bearing in mind that I do not have the advantage of hearing or seeing the witnesses testifying and should make due allowances in that regard.
7. The prosecution marshalled five witnesses in a bid to prove that the appellant committed the offence that he was charged with. PW1 GMO, the complainant's mother testified that her daughter was to return to school on 12th October 2021. However, she was not well. PW1 grew suspicious that her daughter was pregnant. On confronting the complainant, her suspicions were realized. The complainant would later go back to school where she fell sick. She was taken to hospital and discharged.
8. Come 19th December 2021, PW1 noticed that the complainant had disappeared. She would return back home on 20th December 2021. That was when the complainant informed her that she had slept at the appellant's place. That the appellant was her boyfriend. PW1 took her to the hospital where it was confirmed that the complainant was pregnant. She produced the complainant's birth certificate.
9. PW2 DN the complainant herein testified that the appellant was her boyfriend. She met him in January 2021. During the pendency of the relationship, the appellant picked her from the home and would return her back later. She recalled having unprotected sexual intercourse with the appellant for the first time on 28th January 2021. They also had sexual relations during the April holidays and when she finished her K.C.P.E exams. PW2's evidence was that she was pregnant in October of that year. The appellant asked her not to terminate the pregnancy.
10. PW2 later stayed with the appellant for three days from 19th December 2021 and returned back home on 22nd December 2021. PW2 informed her parents where she was. The complainant was then taken to hospital where she was examined. Later on, she gave birth. She added that she had known the appellant for one year.
11. PW3 Agnes Sabir a clinician at Gucha Hospital filed the complainant's P3 form dated 31st December 2021. She saw the complainant on 31st December 2021. She also filed the PRC form dated 3rd January 2022. She confirmed that the complainant was pregnant as at the time she was seen. She produced the complainant's P3 form, PRC form lab results dated 31st December 2021 and her clinic card.
12. PW4 PC Silvia Kemunto, stationed at Ogembo Police Station testified that she conducted her investigations into the matter. She recalled that the complainant was reported missing on 19th December 2021. Later, on 31st December 2021, the minor was brought to the station with claims that she had been staying with the appellant, who was her boyfriend. PW4 gathered evidence, interrogated witnesses and recorded witness statements. At the time of arrest, the appellant went into hiding. He was however retraced on 2nd February 2022 by members of the public and escorted to the police station.



He was then charged with the offence. She produced the appellant's age assessment form confirming that he was above 18 years old.

13. PW5 PC Cynthia Kemunto produced the DNA report of the born child the complainant' gave birth to. She confirmed that there was a 99.9 percent chance that the appellant' was the child's father.
14. At the close of the prosecution's case, the trial court found that the prosecution has established a prima facie case against the appellant. He was placed on his defence. He denied committing the offence but sought forgiveness as he knew the complainant. His defence was that the complainant's brother had asked her to take the complainant to school. He then took her to Ogembo. She later gave him money to purchase a motorcycle on her behalf. Later he was summoned by the complainant's father only to be arrested and charged in court.
15. The ingredients to the offence of defilement are the age of the complainant, penetration and the identity of the offender. The complainant's age was proved by PW1 who produced her birth certificate. At the time of the offence, the complainant was 16 years old. I therefore find that the complainant was a minor within the meaning ascribed to the term under the Children's Act.
16. On penetration and the identity of the culprit, PW2 testified that the appellant was her boyfriend. That she had sexual relations with him on several occasions including the months of January, April and December of 2021. PW5 testified that the complainant was pregnant and that the born child belonged to the appellant. Gathered from that evidence, it is clear that the appellant and the complainant were in a sexual relationship. However, our jurisdiction does not recognize a minor as capable of making decisions of a sexual nature. Accordingly, I find that was conclusive evidence that the appellant caused penetration on the complainant leading to her pregnancy. The appeal against the conviction thus lacks merit and is therefore dismissed.
17. The appellant was sentenced to 15 years imprisonment in line with the dictates of section 8 (4) of the *Sexual Offences Act*. Recent jurisprudence at the Apex Court in the case of Republic vs. Joshua Gichuki Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and Republic vs. Manyeso [2025] KESC 16 (KLR) have confirmed that minimum sentences are lawful and a court cannot afford a sentence lower than that prescribed in law. I am therefore left with no option but to similarly dismiss the appeal against the sentence. However, I direct the period of sentence to be computed from the date the appellant was arraigned in court.

It is so ordered.

JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 28TH DAY OF OCTOBER, 2025.

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HON JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Kipchirchir (Court Assistants)

Ondika for the Appellant

Koime for the Respondent

