



**PNO v Republic (Criminal Appeal E082 of 2024)  
[2025] KEHC 15154 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL APPEAL E082 OF 2024  
JK NG'ARNG'AR, J  
OCTOBER 28, 2025**

**BETWEEN**

**PNO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Kisii (C.A. Ogweni, SRM) delivered on 1st March 2023 in Criminal Case (SO) No. E093 of 2021)*

**JUDGMENT**

1. PNO was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act*. The particulars of the offence were that on 15<sup>th</sup> December 2021 at Kisii central sub-county of Kisii County, the appellant intentionally caused his penis to penetrate the vagina of JO, a child aged 15 years. In the alternative, the appellant faced a charge 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 day and place, the appellant intentionally touched the vagina of JO, a child aged 15 years with his hands.
2. The appellant was arraigned before the trial court. He pleaded 'not guilty' to the main count and the alternative count. After a full trial, the appellant was convicted on the main charge. He was sentenced to 20 years imprisonment.
3. The appellant is aggrieved. He filed his petition of appeal that raised five grounds challenging the findings of the trial court. In summary, he complained that he was convicted on the basis of shoddy investigations with the prosecution failing to discharge its burden of proof to the required standard. He argued that the evidence was marred with fabrications and contradictions. For those reasons, he prayed that his appeal be allowed, the conviction be quashed and the sentence be set aside.



4. The appeal was canvassed by way of written submissions. The appellant filed written submissions dated 15<sup>th</sup> August 2025. He pointed out that PW1 and PW4 contradicted their testimonies in terms of who reported the matter. He also pointed out that PW2 contradicted herself as to whether or not she knew the appellant. He submitted that PW2's evidence was not satisfactory and was indicative that the witness was lying. He bragged that he was a law-abiding citizen as testified by PW3. Finally, he was of the opinion that he had been framed.
5. The respondent opposed the appeal. It filed written submissions dated 29<sup>th</sup> August 2025. It submitted that the prosecution proved the offence of defilement beyond reasonable doubt. It maintained that there were no glaring contradictions and the sentence meted out was lawful. It prayed that the appeal be dismissed.
6. I have considered the submissions, examined the record of appeal and analyzed the law. The duty of this court sitting as a first appellate court has been settled by a wealth of authorities. Briefly put, this court must re-consider, re-analyze and re-evaluate the evidence afresh and make its own findings. The court must however bear in mind that it did not have the advantage of neither seeing nor hearing the witnesses testify and should make due allowance in that regard.
7. The prosecution called five witnesses in a bid to establish that the appellant committed the offence that he was charged with. According to the record before this court, PW1 RK, the complainant's mother testified that the complainant was mentally challenged. Her evidence was that on 15<sup>th</sup> December 2021 at around 8:00 a.m., she left the complainant at home to go work. When she returned back home at 9:30 a.m., the complainant informed her that the appellant had defiled her. The appellant is their neighbour. PW1 took the complainant to hospital and reported the incident at the police station.
8. PW2 JO the complainant, testified that she knew the appellant. Her evidence was that on 15<sup>th</sup> December 2021, the appellant did "tabia mbaya" to her after removing her clothes and his clothes. The appellant slapped her and told her to remain silent. She was thereafter taken to hospital after telling PW1. During her testimony, PW2 walked to the appellant and pointed his penis demonstrating that he used his organs in her vagina.
9. PW3 Nyakundi Johnson, an assistant chief at Nyaura sub-location testified that on 19<sup>th</sup> December 2021, he received the report from PW1. After sending word that he was looking for him, the appellant presented himself to his office. He handed him over to the police.
10. PW4 PC Joseph Kagiri from Kiogoro police station took over the matter from his predecessor PC Kipkemoi Sawe. He testified that on 16<sup>th</sup> December 2021, the complainant's father reported the incident at the police station. Investigations were conducted, exhibits were collected and witness statements were recorded. PW4 established that the minor was born on 25<sup>th</sup> June 2006 as per her birth certificate that was produced in evidence. The appellant was arrested and subsequently arraigned before the trial court to answer to the charges.
11. PW5 Daniel Nyameino, a senior clinical officer at Kisii Teaching and Referral Hospital, examined the complainant on 22<sup>nd</sup> December 2021. He noted that she had a whitish discharge on her private parts. Her hymen was not intact. His evidence was that the complainant contracted syphilis from PW1 or any other encounter as the appellant tested negative for the disease. He added that there was no evidence of laceration or injuries on her genitalia.
12. At the close of the evidence of the prosecution, the trial court formed the opinion that the appellant had a case to answer. He was placed on his defence. He denied committing the offence. He testified that the complainant is his cousin. He added that at 9:30 a.m., PW1 accused him of defiling his minor



- child. He asked her to take the minor to hospital. Later, he was summoned by PW3 and escorted to Kiogoro police station. He maintained that he was framed because PW1 claimed that the appellant squandered money belonging to PW2's father. This was after he sold onions worth Kshs. 45,000.00.
13. A conviction on a charge of defilement must prove the following conjunctive elements: the age of the complainant, the aspect of penetration and identity of the culprit. The prosecution produced the complainant's birth certificate confirming that she was born on 25<sup>th</sup> June 2006. The offence occurred on 15<sup>th</sup> December 2021, at which time the complainant was 15 years 6 months old. I find that the complainant was a child within the meaning ascribed to the term in the Children's Act.
  14. On penetration, PW2 testified that she was sexually assaulted on the morning 15<sup>th</sup> December 2021. Her evidence was that he did "tabia mbaya" to her. She was examined on 22<sup>nd</sup> December 2021. PW5's findings were that though there no lacerations, the complainant's hymen was not intact. I do not think that the appellant testing negative for syphilis negated the aspect of penetration. Her hymen was not intact and she was emphatic that she had been defiled. I therefore agree with the trial court's analysis and findings that penetration was proved beyond reasonable doubt.
  15. The last ingredient is the identity of the assailant. PW2 was the sole witness to the offence. Though mentally challenged, her unshaken evidence was that on 15<sup>th</sup> December 2021, the appellant did "tabia mbaya" to her after removing her clothes and his clothes. The appellant slapped her and told her to remain silent. She was thereafter taken to hospital after telling PW1. During her testimony, PW2 walked to the appellant and pointed his penis demonstrating that he used his organs in her vagina.
  16. PW2 knew the appellant very well. PW1, who lived with PW2 also recognized the appellant as their neighbour. The court observed that in spite of her mental challenges, PW1 was deliberate with the truth and was able to articulate what she underwent. She also vividly described by walking to the appellant in the dock, the instrument he used to penetrate her and defile her. Though the appellant raised a defence that he was framed, he did not put it to the prosecution witnesses. I therefore find that it was an afterthought.
  17. The appellant raised the issue that there were contradictions in the evidence of the prosecution. I have however found none. Be that as it may, the contradictions apparent in the record are minor and do not question the credibility of the prosecution's case. That argument must therefore fail. Ultimately, it is my view that the appeal on conviction lacks merit and is hereby dismissed.
  18. The appellant was sentenced to 20 years imprisonment. The court took into account the mental vulnerability of the victim and the relationship she had with the accused. The trial court formed the opinion that there was need to rehabilitate the appellant while protecting the public from his predatory behaviour. I find that the court properly considered what was necessary to sentence the appellant to 20 years imprisonment. That sentence is lawful. The appeal therein lacks merit and is dismissed.

It is so ordered.

**JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**HON JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of:

Siele/Kipchirchir (Court Assistants)



Appellant Present

Koime for the Respondent

