

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

CRIMINAL APPEAL NO. E006 OF 2025

SAMUEL NDIGHILA.....
APPELLANT

=VERSUS=

REPUBLIC.....
.....RESPONDENT

(Being an appeal from the conviction and sentence of Hon. D. Wangeci (SPM) in Wundanyi SPMCC Sexual Offence No. E015 of 2023 delivered on 6th February 2025)

JUDGMENT

1. The Appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006.
2. The particulars of the charge were that on diverse dates in April 2023 at around 1600 hours at Mbale Area within Taita Taveta County, the Appellant caused his penis to penetrate the anus of M.M, a child aged 11 years.
3. The Appellant pleaded not guilty to the charge.

4. The prosecution called five (5) witnesses whose evidence in summary was that the complainant, M.M.M, a child aged 11 years was living with her grandmother at the material time.
5. The complainant who testified as PW1 said in the month of April 2023 while going home from school, she met the Appellant going towards the shops.
6. PW1 said the Appellant led her to a bush, pushed her to the ground, covered her mouth, undressed her and raped her.
7. PW1 said the Appellant threatened her and warned her against telling her grandmother.
8. Two days later the complainant urinated on herself and her grandmother was called to school. The complainant told the school Deputy Principal what had happened.
9. The complainant was taken to Wesu Sub County Hospital where PW3 a Medical Doctor examined her.
10. The doctor said there were healed lacerations on the labia the hymen was intact.

11. In his defence, the Appellant said the complainant had a history of sexual assault while living in Mombasa and that the charge was instigated by the complainant's grandmother out of jealous.
12. The trial court found that the prosecution had proved the charge of defilement to the required standard.
13. The Appellant was sentenced to life imprisonment.
14. The Appellant is now appealed against the sentence on the following amended grounds:-
 - (i) **That the trial court Magistrate erred in both law and facts when convicting the Appellant to life imprisonment without considering that the charge sheets as preferred was defective since the particulars of the offence did not disclose when the offence was committed. May this be considered by this court.**
 - (ii) **That the trial court Magistrate erred in both law and facts when convicting the Appellant to life imprisonment without considering that the medical documents that were produced in support of this case were fake. May this also be considered.**

(iii) That the trial court Magistrate erred in both law and facts when convicting the Appellant to life imprisonment without considering that there was no investigation done in this case, hence seeking the court's intervention.

(iv) That the trial court Magistrate erred in law and facts when convicting the Appellant to life imprisonment without disclosing why the Appellant's defence was rejected and it was meritorious for the Appellant's acquittal.

(v) That the trial court Magistrate erred in both law and facts when convicting the Appellant to life imprisonment without considering that the Appellant was a student hence seeking to pursue higher education.

15. The parties filed written submissions as follows:- The appellant, Samuel Dinghila, submitted that he seeks to overturn his conviction for defilement and the subsequent life sentence.

16. His appeal is grounded on several key arguments challenging the procedural integrity of his trial and the sufficiency of the evidence presented against him.

17. The appellant first contends that the charge sheet was fundamentally defective.

18. He argues that the phrase "on the diverse dates of April 2023" is impermissibly vague, failing to specify a single date or a clear timeframe for the alleged offence.
19. That this lack of particularity violated sections 134 and 137 of the Criminal Procedure Code and prejudiced his ability to mount a proper defence, as he could not be certain of the specific incident he was alleged to have committed.
20. He invokes the principle that a fair trial must be free of injustice and prejudice, asserting that this defect in the charge sheet compromised the very foundation of a fair legal process from the outset.
21. Secondly, the appellant challenges the credibility and consistency of the prosecution's evidence, particularly the medical documentation.
22. He points to numerous alleged discrepancies in the timeline and the complainant's account.
23. He highlights that the complainant testified the incident was revealed two days after it occurred in April, yet the grandmother and teacher were not notified until May 8th.
24. He further questions the medical evidence, noting that the clinical officer reported the hymen was intact and that the complainant had a history of urinating on herself and a prior alleged sexual assault in Mombasa.

25. The appellant argues that the medical forms (PRC and P3) contain conflicting dates and lack crucial details, rendering them unreliable.
26. He further submitted that the complainant's behaviour was not a direct result of a single recent traumatic event but part of a pre-existing pattern, casting doubt on the core allegation of defilement by him.
27. The third major ground of appeal is the alleged failure of the investigation. The appellant characterizes the investigating officer's testimony as hearsay and argues that no proper scene investigation was conducted.
28. He questions the plausibility of the incident, noting that the alleged defilement occurred in a public area at 4:30 p.m. yet no witnesses were presented to corroborate the complainant's story.
29. He also implied that the complainant's delayed disclosure and the lack of immediate physical distress undermine the prosecution's case.
30. Finally, the appellant argued that his defence of alibi was not properly considered by the trial court.
31. He maintained that the burden was on the prosecution to disprove his alibi and that the trial magistrate erred in rejecting it without adequate reasoning.

32. In his concluding remarks, he professed his innocence, describing himself as a victim of circumstances and jealousy within the community, and pleads for the opportunity to be acquitted so he can pursue his university education.
33. In summary, the appellant seeks the quashing of his conviction and the setting aside of his life sentence, arguing that his trial was marred by a defective charge, unreliable and inconsistent evidence, a shoddy investigation, and a failure to properly evaluate his defence.
34. The Respondent submitted that the Appellant's appeal against both his conviction and sentence for defilement should be dismissed in its entirety.
35. That the conviction by the trial magistrate was sound, as the prosecution successfully proved all essential elements of the offence beyond a reasonable doubt.
36. The victim's age of 11 years was conclusively established through the production of a birth certificate.
37. That penetration was convincingly demonstrated through the minor's own testimony, which was consistent and credible, and corroborated by medical evidence that revealed a laceration on her labia.

38. Further, that the Appellant was positively identified by the victim as her assailant, a person well-known to her as a neighbour and casual worker for her grandfather.
39. The trial court was entitled to, and did, rightly rely on the sole evidence of the minor, in accordance with Section 124 of the Evidence Act.
40. The Appellant's defence was rightly dismissed as an afterthought, lacking in substance and not raised during the initial investigation.
41. Regarding the sentence of life imprisonment, the Respondent submits that it is lawful and appropriate.
42. The sentence is mandated by Section 8(2) of the Sexual Offences Act for the defilement of a child aged eleven years.
43. The trial court properly considered the matter before passing sentence, and the Appellant has failed to demonstrate that the sentence was manifestly excessive or based on any wrong principle.
44. The Respondent relies on recent jurisprudence from the Supreme Court of Kenya, which has consistently reinstated life sentences in defilement cases, affirming that such sentences are proper and that appellate courts should not substitute them with term sentences.

45. Consequently, the Respondent urged this Court to uphold both the conviction and the sentence, and to dismiss the appeal.
46. This being a first appeal, it is the duty of this court to subject the entire evidence adduced before the trial court to a fresh and exhaustive examination and to draw its own conclusions, while bearing in mind that it did not have the opportunity to see and hear the witnesses testify.
47. This principle was aptly stated in the case of **Okeno vs. Republic [1972] EA 32**, where the Court of Appeal for East Africa held that a first appellate court must itself weigh the conflicting evidence and make its own conclusions, but it must make allowance for the fact that it has not seen the witnesses.
48. This duty was further elaborated in the case of **Pandya vs. Republic [1957] EA 336**, which emphasized that the appellate court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he failed to take into account particular circumstances or probabilities, or if the impression of the demeanor of a witness is inconsistent with the evidence in the case.
49. This Court has carefully considered the record of appeal, the amended grounds, and the submissions by both parties.
50. **The issues falling for determination in this appeal are as follows;**

- (i) Whether the charge sheet was defective.**
- (ii) Whether the prosecution proved the charge of defilement beyond reasonable doubt.**
- (iii) Whether the appellant's defence was properly considered.**
- (iv) Whether the sentence imposed was lawful and appropriate.**

51. On the first issue regarding the defectiveness of the charge sheet, the appellant contends that the phrase "on diverse dates in April 2023" was impermissibly vague and prejudiced his ability to mount a defence, thus violating Sections 134 and 137 of the Criminal Procedure Code.
52. However, the law on this point is settled. The purpose of a charge is to give the accused person clear and unambiguous notice of the offence with which he is charged.
53. The use of the term "diverse dates" within a specified month has been held not to render a charge defective, particularly in sexual offences where a child victim may not recall the exact date with precision.
54. A charge is not defective if it gives the accused person reasonable information as to the nature of the offence charged.

55. In the present case, the charge specified the month, the year, the approximate time, the location, the nature of the act, and the identity of the victim.
56. This was sufficient information to afford the appellant a fair chance to prepare his defence. This ground, therefore, fails.
57. Concerning the second and central issue of whether the prosecution proved its case beyond reasonable doubt, the key ingredients of defilement under Section 8(1) of the Sexual Offences Act are: the age of the complainant, proof of penetration, and the identity of the perpetrator.
58. On the age of the complainant, the production of a birth certificate (P.Exhibit 2) conclusively proved that she was 11 years old at the material time. This ingredient was satisfactorily established.
59. On the proof of penetration, the complainant (PW1) gave a clear and consistent account of how the appellant led her to a bush, pushed her down, and penetrated her anus.
60. Her testimony was that she felt pain. This evidence of penetration was corroborated by the medical evidence of PW3, the Clinical Officer, who found healed lacerations on the labia.
61. The fact that the hymen was intact is not fatal to the prosecution's case, as penetration is defined under Section 2 of the Sexual Offences Act as the "partial or complete insertion of

the genital organs of a person into the genital organs of another person."

62. The finding of lacerations on the labia is consistent with attempted or partial penetration and is sufficient to establish this ingredient.
63. The slightest penetration, even of the labia, is sufficient to prove the act. The appellant's attempt to discredit the medical evidence by pointing to the complainant's history of enuresis and a prior alleged assault in Mombasa was, in my view, an attempt to introduce a red herring.
64. The trial magistrate, who saw and heard the witnesses, found the complainant to be a credible witness, and I find no reason to disturb that finding.
65. On the identity of the perpetrator, the complainant knew the appellant well as a neighbour and a casual labourer for her grandfather.
66. She identified him by name and gave a coherent account of their encounter.
67. Her testimony on identification was firm and remained unshaken under cross-examination. Section 124 of the Evidence Act permits a court to convict on the sole evidence of a victim of a sexual offence if the court is satisfied that the victim is telling the truth. The trial court was so satisfied, and I concur.

68. The alleged inconsistencies in the timeline, such as the delay in reporting from April to May, were adequately explained by the complainant's fear, given the appellant's threats. Such delays are not uncommon in cases involving child victims and do not, by themselves, vitiate the prosecution's case.
69. On the third issue, the appellant contends that his defence was not properly considered. The appellant's defence was essentially a denial and an allegation of a frame-up by the complainant's grandmother. The duty of a trial court when faced with an accused's defence is to consider the defence, however brief, but it can be rejected if it does not displace the prosecution's evidence.
70. The trial magistrate in her judgment did consider the appellant's defence but found it to be an afterthought and incapable of casting doubt on the otherwise strong and credible evidence adduced by the prosecution. I find no error in this conclusion.
71. Finally, on the issue of sentence, the appellant was sentenced to life imprisonment as prescribed under Section 8(2) of the Sexual Offences Act for defilement of a child aged eleven years.
72. The appellant argued that he was a student and should be given a chance to pursue his education.

73. However, the law mandates a life sentence for this offence. The Supreme Court of Kenya in *JWM vs. Republic* [2023] KESC 40 reaffirmed the constitutional validity of life imprisonment for defilement and emphasized that appellate courts should not readily interfere with the sentence prescribed by statute.

74. The trial court imposed the lawful sentence, and I find no compelling reason to disturb it. The appeal against sentence likewise fails.

75. In the final analysis, having re-evaluated the evidence on record, I find that the conviction was safe and based on sound evidence that proved all the ingredients of the offence of defilement beyond reasonable doubt.

76. The sentence imposed was lawful and appropriate.

77. Consequently, this appeal is devoid of merit and it is hereby dismissed in its entirety.

78. The conviction and sentence by the trial court are upheld.

79. **ORDERS TO ISSUE ACCORDINGLY.**

**Dated, signed and delivered this 3rd day of November 2025 in
open court at Voi High Court.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the Appellant**

.....**for the Respondent**

ORIGINAL