**Rono v Republic (Criminal Appeal E005 of 2024)**
**[2025] KEHC 15689 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15689 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BOMET**

**CRIMINAL APPEAL E005 OF 2024**

**JK NG'ARNG'AR, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**GILDON RONO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(From the conviction and sentence in Sexual Offence Case Number E020 of 2023 by Hon. Michuki M. in the Magistrate's Court at Bomet)***

## JUDGMENT

1. Gildon Rono (now Appellant) 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 charge were that on 18th April 2023 at [Particulars withheld] Acacdemy, Silibwet Township Location within Bomet County, the Appellant intentionally caused his penis to penetrate the vagina of BC, a child aged 14 years.

2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on 18th April 2023 at [Particulars withheld] Acacdemy, Silibwet Township Location within Bomet County, he intentionally touched the vagina of BC, a child aged 14 years with his penis.

3. The Appellant pleaded not guilty to the charge before the trial court and a full hearing was conducted. The prosecution called seven (7) witnesses in support of its case. At the close of the prosecution case, the trial court ruled that a prima facie case had been established against the Appellant and he was put on his defence. The Appellant gave sworn testimony and called one witness in aid of his defence.

4. At the conclusion of the trial, the Appellant was convicted of the offence of defilement and sentenced to serve fifteen (15) years in prison.

5. Being dissatisfied with the Judgment of the trial court the Accused, Gildon Rono appealed against his conviction and sentence.

6. This being the first appellate court, I am conscious of the duty to re-evaluate the evidence given at the trial court and come to my own independent conclusion and decision. I now proceed to summarize the Prosecution's case and the Appellant's defence in the trial court and their respective submissions in the present Appeal.

**The Prosecution's/Respondent's Case.**

7. It was the Prosecution's case that the Appellant defiled BC (PW1) on 18th April 2023. PW1 testified that on the material day, students were making phone calls to their parents using the Appellant's phone. PW1 further testified that the Appellant told her to go to his office so that she could speak to her father and when they got to the Appellant's office, the Appellant grabbed her, covered her mouth and defiled her.

8. Geoffrey Cheruiyot Kirui (PW6) who was the clinical officer at Bomet Health Centre testified that she examined PW1 on 19th April 2023 and found that PW1 had physical lacerations on her labia majora and minora. PW6 further testified that upon carrying out urinalysis, he found a few epithelial cells. PW6 concluded that there was evidence of penetration.

9. At the time of writing this Judgement, the Respondent had not filed their written submissions.

**The Accused's/Appellant's Case.**

10. The Appellant, Gildon Rono (DW1) testified that on the material day, his students requested to use his phone to make phone calls to their parents. DW1 further testified that after all the students finished making their phone calls, the students helped him close his office and he asked them to leave. It was DW1's testimony that he remained in the office with two boys.

11. Abdi Kipkorir Koech (DW2) testified that he was a student at [Particulars withheld] Academy. DW2 testified that on the material day, he went to call his parents through the Appellant's phone and he waited for all the students to finish their calls before he called his mother at around 9 p.m.

12. It was DW2's testimony that on the material day, the Appellant left him with the office keys and he (DW2) was the last one to leave the office. It was DW2's further testimony that after he closed the office, the Appellant went to the kitchen where the other teachers were and he (DW2) went to the dormitory to sleep.

13. The Appellant filed his written submissions on 22nd May 2025. He submitted that the charge sheet was defective as the complainant's testimony differed from what was contained in the Charge Sheet. The Appellant further submitted that the charge sheet was defective as it did not indicate all the Prosecution's witnesses.

14. It was the Appellant's submissions that the complainant's testimony was false. That the proceedings in the trial court were defective and contradictory. It was the Appellanft's further testimony that his alibi defence was not considered.

15. The Appellant submitted that the time and place of the alleged offence were not established or proved. The Appellant further submitted that the Prosecution failed to prove the ingredients of defilement.

16. I have gone through and given due consideration to the trial court's proceedings, the Record of Appeal and the Appellant's written submissions filed on 22nd May 2025. The following issues arise for my determination: -

    i. Whether the Charge Sheet was defective.

    ii. Whether the Prosecution proved its case beyond reasonable doubt.

    iii. Whether the Defence placed doubt on the Prosecution case.

    iv. Whether the sentence preferred against the Appellant was harsh.

**i.Whether the Charge Sheet was defective**

17. The Appellant submitted that the charge sheet was defective on account of the it not listing all the Prosecution's witnesses and further that the complainant's testimony did not mirror the particulars contained in the charge sheet. The substantive law on defective Charge Sheets is Section 134 of the Criminal Procedure Code which provides as follows: -

> Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

18. The Court of Appeal in the case of Isaac Omambia v Republic [1995] KECA 156 (KLR) stated as follows: -

> " In this regard, it is pertinent to draw attention to the following provisions of S. 134 of the Criminal Procedure Code which makes particulars of a charge an integral part of the charge: Every charge or information shall contain, and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence."

19. From the trial court record, the Appellant was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*. The Appellant took plea on 24th April 2023 and the trial commenced and proceeded with seven prosecution witnesses who were all cross examined by the Appellant and later by his Advocate. When the Appellant was placed in his defence, he testified, called one witness and closed his case. The Appellant was fully aware of the charge he faced from the beginning and actively participated in the trial and the trial culminated with his defence.

20. The key issue in determining whether a charge sheet is defective or not is the prejudice it would cause the Appellant. The Court of Appeal in Benard Ombuna v Republic [2019] KECA 994 (KLR) held as follows: -

> " In a nutshell, the test of whether a charge sheet is fatally defective is substantive rather than formalistic. Of relevance is whether a defect on the charge sheet prejudiced the appellant to the extent that he was not aware of or at least he was confused with respect to the nature of the charges preferred against him and as a result, he was not able to put up an appropriate defence."

21. Having considered the trial court record, I am satisfied that the Appellant faced no prejudice as he had the opportunity to present his defence, which he did. In essence, the charge sheet was not defective and I therefore dismiss this ground of appeal.

**ii. Whether the Prosecution proved its case beyond reasonable doubt.**

22. It is trite law that for the offence of defilement to be established, the age of the victim, penetration and positive identification or recognition of the offender have to be proved.

23. On the issue of age, Rule 4 of the Sexual Offences Rules of Court 2014 provides that: -

> When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.

24. PC (PW1) testified that she was born on 6th June 2008. PW1 produced a Birth Certificate as P. Exh1. I have looked at the Birth Certificate and it corroborated PW1's testimony. This would make PW1 14 years old at the time of the commission of the offence. The production and authenticity of the Birth Certificate was not challenged by the Appellant during cross examination. It is therefore my finding that PW1 was aged 14 years old at the time of the commission of the offence.

25. With regard to the issue of identification, the victim (PW1) testified that the Appellant was her headteacher at [Particulars withheld] Academy. The victim (PW1) testified that she had gone to make a call with the Appellant's phone. This Testimony was corroborated by the Appellant when he confirmed that at the material time, he was a teacher in [Particulars withheld] Academy and further confirmed that PW1 used his mobile phone. From the Prosecution's testimony, [Particulars withheld] Academy was a boarding school. By the nature of boarding schools, interactions between teachers and students are frequent and I am satisfied that this was evidence of recognition. I am guided by Peter Musau Mwanzia v Republic [2008] KECA 92 (KLR) where the Court of Appeal held: -

> "We do agree that for evidence of recognition to be relied upon, the witness claiming to recognise a suspect must establish circumstances that would prove that the suspect is not a stranger to him and thus to put a difference between recognition and identification of a stranger. He must show, for example, that the suspect has been known to him for some time, is a relative, a friend or somebody within the same vicinity as himself and so he had been in contact with the suspect before the incident in question. Such knowledge need not be for a long time but must be for such time that the witness, in seeing the suspect at the time of the offence, can recall very well having seen him earlier on before the incident....."

26. From the evidence above, I am clear that the victim (PW1) and the Appellant were not strangers and knew each other well. Therefore, I have no reason to disbelieve or doubt that the positive identification of the Appellant by the victim (PW1). There was no possibility of mistaken identity.

27. With regards to penetration, Section 2 of the *Sexual Offences Act* defines penetration as the partial or complete insertion of genital organs into the genital organs of another person. The Prosecution has to prove penetration or act of sexual intercourse to sustain a charge of defilement.

28. Penetration can be proved through the evidence of the victim corroborated by medical evidence. In the instant case, I shall carefully evaluate the victim's testimony and the medical evidence tendered.

29. I shall begin with the victim's testimony. PW1 testified that on the material day, the Appellant called her to his office, pushed her to the wall, covered her mouth and defiled her. PW1 further testified

that the Appellant did not finish the act of sexual intercourse. The victim's (PW1) testimony was uncontroverted after cross examination. I find PW1's testimony to be cogent and truthful as she was able to satisfactorily explain what happened to her the circumstances leading to the commission of the offence and having considered the resultant cross examination, I have no reason to disbelieve her.

30. Regarding medical evidence, Geoffrey Cheruiyot Kirui (PW6) a clinician based at Bomet Health Centre testified that he examined PW1 on 19th April 2025 and found that PW1 had lacerations on her labia majora and minora. PW6 further testified that upon doing urinalysis, he found epithelial cells and all these indicated penetration. PW6 produced a P3 Form, PRC Form and a Lab Report as P. Exh 2, 3 and 4 respectively. I have looked at the exhibits and I have confirmed that the contents corroborate PW6's testimony. I accept PW6's professional opinion that there was evidence of penetration.

31. Having considered the victim's (PW1) testimony and the medical evidence tendered by PW6, it is my finding that the victim was penetrated by the Appellant on the material day.

32. Based on the totality of the evidence before me, it is my finding that the Prosecution satisfactorily established the age of the complainant, proof of identification and penetration. It is also my finding that Prosecution proved its case against the Appellant beyond reasonable doubt.

**iii. Whether the Defence placed doubt on the Prosecution's case.**

33. The Appellant's (DW1) defence was aptly captured in detail earlier in this Judgment. The Appellant denied committing the offence and testified that on the material day, he remained in his office with two boys after all the students had made their phone calls and left.

34. Abdi Kipkorir Koech (DW2) testified that he remained in the office with the Appellant after the students had left and he locked the office and went to sleep. This was an alibi defence. In the case of R vs Sukha Sign S/O Wazir Singh & 7 Others (1939) 6 EACA 145, the former Court of Appeal for Eastern Africa held that: -

> " If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards, there is naturally a doubt as to whether he has not been preparing it in the interval, secondly, if he brings it forward at the earliest possible moment, it will give prosecution an opportunity of inquiring into the alibi and if they are satisfied as to its genuineness, proceedings will be stopped".

35. It is trite that once the Appellant raised an alibi defence, the onus was on the Prosecution to displace the defence of alibi after the defence raises it at the trial. This was held in the Court of Appeal case Victor Mwendwa Mulinge v Republic [2014] KECA 710 (KLR) as: -

> " It is trite law that the burden of proving falsity, if at all, of an accused 's defence of alibi lies on the prosecution".

36. The Court of Appeal in the case of Wangombe Vs Republic (1980) KLR 149 held as follows: -

> " ..... In Ssentale vs. Uganda (1968) EA 365, 368 (Sir Udo Udoma CJ).... said that a prisoner who puts forward an alibi as an answer to a charge does not thereby assume any burden of proving that answer; it is a misdirection to refer to any burden as resting on the prisoner in such a case; for the burden of proving his guilt remains throughout the prosecution. We agree, we have ourselves said so on more than one occasion. . . .The defence of alibi was put forward for the first time some four months after the robbery when the appellant made his

> unsworn statement in court. Even in such circumstances the prosecution or the police ought to check and test the alibi wherever possible".

37. In the present case, the Appellant's defence of alibi was raised at the defence hearing and not at the beginning of the trial thus denying the Prosecution an opportunity to verify the alibi. I have also noted that the issue of the alibi was not put across the Prosecution witnesses during cross examination. This in my view was an afterthought by the Appellant.

38. I have further noted that during DW2's cross examination, he was unable to show that he was a student at Kipkebe Precious Academy. DW2 contradicted himself when he testified upon cross examination that he could not tell if he was the last person who spoke on the Appellant's phone. This was after he testified that he remained with the Appellant in his office after all the other students had left. In my view, this hurt the credibility of DW2's testimony.

39. It is my view that the Appellant's defence as a whole was a denial and an afterthought and did not displace the Prosecution case which I have already found proven.

**iv. Whether the sentence preferred against the Appellant was harsh.**

40. Sentencing is at the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. The trial court must be guided by the evidence and sound legal principles.

41. The penal section for this offence is found in section 8(3) of the *Sexual Offences Act* which states that: -

> 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.

42. I have considered the circumstances of this case and the fact that the victim was aged 14 years old at the time the offence was committed. I have also considered the Appellant's mitigation in the trial court.

43. As stated above, the minimum sentence for the offence of the present offence was 20 years. In regards to the law stated above, the trial court was lenient. It is my finding therefore that the trial court did not err when it sentenced the Appellant to serve 15 years imprisonment.

44. For avoidance of doubt, I uphold the Appellant's conviction and sentence.

45. In the end, the Appeal filed on 8th August 2025 has no merit and is dismissed.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 4TH DAY OF NOVEMBER, 2025.**

**.....**

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

**JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants)

Ms. Koech for the Respondent

Appellant present in person