



**PNK v Republic (Criminal Appeal E040 of 2025)
[2025] KEHC 18066 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E040 OF 2025
AN ONGERI, J
DECEMBER 4, 2025**

BETWEEN

PNK APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. A. M. Obura (CM) in Voi
CMCC Sexual Offence Case No. E038 of 2023 delivered on 18th June 2025)*

JUDGMENT

1. The Appellant was charged with 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 offence were that on 12th August 2023 at about 2100hours at Voi Sub County within Taita Taveta County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of NN, a child aged 4 years.
3. The Appellant was charged with an alternative charge of committing an Indecent Act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006 in that in the same material particulars as in Count 1, the Appellant intentionally touched the vagina of NN, a child aged 4 years with his penis.
4. The Appellant pleaded not guilty and the prosecution called six (6) witnesses whose evidence in summary is as outlined hereafter.
5. That sometimes in the evening of 12th August 2024, PW1 the complainant's mother TM was in the kitchen cooking while the complainant was asleep in their other house.
6. The Appellant went to the other house, picked the complainant, went with her to a nearby school defiled her and then returned her to the homestead.



7. When the complainant's mother's mother went to check on the child, she found her crying outside and in bad shape.
8. The minor was bleeding profusely from her private parts.
9. The minor was taken to hospital. The discharge summary indicated that the minor had pain on the back of the head and her vagina was seriously injured and she was bleeding profusely.
10. She had a vagina tear that was stitched at the Hospital. The child stayed in hospital for two weeks.
11. The minor said it was "P" who did it to her. PW5 Corporal Esther Mutemi said she interrogated the child and the child said the person who did it to her was called "P".
12. PW5 said "P" was a distant relative who was there on the material night but he disappeared.
13. PW5 arrested the Appellant in December while she was on maternity leave.
14. The Appellant denied that he committed the offence and he said the father of the child owed him Kshs. 10,000/= and that is why he coached the minor to implicate him.
15. The Appellant said on the material night he was working as a night watchman. He went home for supper and returned to work.
16. The Appellant said he saw people gathered and he inquired what had happened. He was told the minor had been defiled.
17. The Appellant said he later heard that the father of the minor was spreading rumours that he had kissed the minor.
18. The Appellant called one witness, DW2 MN who is his step brother. DW2 said the minor's mother is also a step sister from another mother.
19. DW2 said they live near the highway where there are truck drivers who could have done it. DW2 said the Appellant did not commit the offence.
20. The trial court found the Appellant guilty as charged and sentenced him to life imprisonment.
21. The Appellant has appealed against the conviction and sentence on the following grounds:-
 - i. That the trial Magistrate erred in both law and facts in failing to notice that the Appellant's identity was not described by either the victim or any of the prosecution's witnesses to affirm the perpetrator as was alleged.
 - ii. That the trial Magistrate erred in both law and facts by relying on the coached evidence without considering that the same were misleading.
 - iii. That the trial Magistrate erred in both law and facts by relying on the prosecution's evidence which were inconsistent, contradicted and far-fetched.
 - iv. That the trial Magistrate erred in both law and facts by relying on the prosecution's evidence without weighing the evidence of the Investigating Officer which were shoddily done.
 - v. That the trial Magistrate erred in both law and facts by imposing life sentence as she did without bearing in mind that the imposed sentence was and is unconstitutional thus caused injustice and discrimination on the other side.



22. The parties filed written submissions as follows; The Appellant, PNK, seeks to overturn his conviction and life sentence for a sexual offence. His case rests on several core arguments contesting the integrity of the trial process and the evidence presented.
23. The Appellant fundamentally challenges the identification evidence, arguing it was insufficient and unreliable.
24. He highlights that the complainant's mother (PW1) testified she could not identify the perpetrator, only relaying the name "P" as told by the child, whom she did not know.
25. The Clinical Officer (PW3) noted the child said the assailant was known to the family but did not name him, and the Investigating Officer (PW5) found the child unable to narrate the event days later.
26. The Appellant points to a contradiction where the complainant's father (PW4) claimed familiarity with him, while the mother denied it.
27. He further notes the complainant's own testimony that her eyes were covered and that she was told by her father to name the Appellant, casting serious doubt on the identification process.
28. The submissions allege that the prosecution's evidence was coached, inconsistent, and contradictory.
29. The Appellant emphasizes a critical discrepancy where PW4 and PW6 allegedly relied on the same witness statement, suggesting collusion.
30. He details contradictions in timelines and narratives: between the mother stating she phoned the father from afar and the father claiming he was present at the scene; between the report of kidnapping initially made to police and the subsequent defilement charge; and between the alleged scene of the crime (a cattle shed versus a nearby bush).
31. The Appellant also questions anomalies in the charge sheet and the swift transition from his alleged month-long flight to a specific arrest date.
32. Regarding the investigation, the Appellant contends it was shoddy. He argues the Investigating Officer's description of the scene was vague and inconsistent with other testimony.
33. He criticizes the failure to secure the complainant's allegedly blood-stained clothing as evidence, despite its description in the PRC form, and questions the repeated involvement of a specific doctor in filling out medical forms.
34. Finally, the Appellant challenges the life sentence as unconstitutional, unjust, and discriminatory.
35. He argues the trial magistrate improperly considered his alleged bad character and lack of remorse, and that a mandatory life sentence fails to meet the objectives of sentencing policy, violating principles of equality and human dignity.
36. He cites case law to support the principle that the prosecution's burden of proof beyond reasonable doubt was not met due to the gaps and inconsistencies in the evidence, and that his alibi defence was wrongly dismissed.
37. In conclusion, the Appellant prays for the appeal to be allowed, his conviction quashed, the life sentence set aside, and for him to be set at liberty.
38. The Respondent opposed the appeal, submitting that the prosecution conclusively proved all essential elements of the offence of defilement beyond reasonable doubt.



39. The age of the complainant, a child of tender years, was conclusively established as four years through an age assessment report.
40. Penetration was proved by the complainant's own testimony, supported by medical evidence which detailed profuse bleeding and an extensive third-degree vaginal tear requiring surgical repair, injuries consistent with violent penetration.
41. Positive identification of the appellant was firmly established, as the complainant knew him as her uncle and repeatedly named him as her assailant to her mother, a fact corroborated in court.
42. The defence, which alleged a familial grudge and coaching of the child, was rightly rejected by the trial court. The appellant's actions were a grave breach of trust, leaving the child permanently scarred.
43. Considering the heinous nature of the crime, the vulnerability of the victim, and the need for both deterrence and societal condemnation, the imposed sentence of life imprisonment was not only lawful but also proportionate and just in the circumstances of this case.
44. I have carefully considered the record of appeal, the submissions of both parties, and the evidence adduced before the trial court.
45. The issues falling for this court's determination in this appeal are as follows;
 - i. Whether the prosecution proved the charge of defilement against the Appellant beyond reasonable doubt.
 - ii. Whether the identification of the Appellant as the perpetrator was free from error.
 - iii. Whether the sentence imposed was lawful and appropriate in the circumstances.
46. On the first issue, the ingredients of the offence of defilement under Section 8(1) of the [Sexual Offences Act](#) are the proof of the age of the complainant, proof of penetration, and proof of the identity of the perpetrator.
47. The age of the victim was conclusively established as four years through the age assessment report, a fact not seriously challenged.
48. On penetration, the medical evidence was overwhelming. The P3 form and the discharge summary, produced by the Clinical Officer (PW3), detailed profuse bleeding and a serious third-degree vaginal tear that required surgical repair and a two-week hospital admission.
49. This evidence was consistent with the testimony of the complainant's mother (PW1) and the complainant herself (PW2).
50. There can be no doubt that the offence of penetration was proved to the required standard.
51. The main issue in this appeal lies in the second issue on the identification of the Appellant.
52. The Appellant contends that the evidence was coached, inconsistent, and insufficient to place him at the scene as the perpetrator.
53. This court has scrutinized the evidence on record. The complainant, a child of tender years, testified that the Appellant, whom she knew as "P" and identified in court, took her from her house, covered her eyes, and defiled her.
54. She repeated this assertion to her mother (PW1) immediately after the incident.
55. The trial magistrate conducted a *voire dire* examination and found the child competent to testify.



56. While it is true that the initial report to the police mentioned an unknown person and that there were some inconsistencies in the witnesses' accounts such as whether the complainant's father (PW4) was called or was present, these do not, in my view, vitiate the core of the prosecution's case.
57. The principles regarding the testimony of a single identifying witness, require the court to test the evidence with utmost care.
58. However, this was not a case of visual identification in difficult circumstances. This was recognition by a child who knew the Appellant as a relative.
59. The defence of alibi and the allegation of a grudge due to a debt were considered and rightly rejected by the trial court.
60. An alibi must be raised at the earliest opportunity and must be weighed against the strength of the prosecution case.
61. The trial court found the alibi unpersuasive, and I find no reason to disturb that finding.
62. The inconsistencies highlighted by the Appellant, such as the precise location of the incident or the sequence of phone calls, were minor and did not go to the root of the identification.
63. The consistent thread was the complainant's unshaken assertion that it was "P" who assaulted her.
64. In matters of defilement of a young child, the court is guided by the provisions of Section 124 of the Evidence Act, which permits a conviction on the sole and uncorroborated testimony of the victim, if the court is satisfied that the witness is telling the truth.
65. The trial magistrate, who saw and heard the child testify, was so satisfied. I find no perversity in that conclusion.
66. Regarding the final issue on sentence, the Appellant was convicted under Section 8(2) of the Sexual Offences Act, which prescribes a mandatory sentence of life imprisonment for defiling a child aged eleven years or less.
67. The Appellant has challenged this sentence as unconstitutional, relying on the principles established in Francis Karioko Muruatetu & Another v. Republic.
68. The Supreme Court in the Muruatetu case specifically addressed the mandatory nature of the death penalty for murder.
69. The Court of Appeal has since clarified, in multiple decisions, that the Muruatetu principles do not automatically invalidate all mandatory sentences, particularly those prescribed under the Sexual Offences Act.
70. The legislative intent behind Section 8(2) is clear and reflects the societal outrage and the need for the utmost protection of children of tender years from sexual predators.
71. The sentence is a reflection of the gravity of the offence. The trial court was therefore bound by the express provision of the law.
72. In this case, the victim was a defenseless four-year-old child who suffered a grievous third-degree vaginal tear, profuse bleeding, and required extensive hospitalization.
73. The offence is of the most serious category contemplated by the Act. I find no constitutional infirmity in the application of the mandatory life sentence prescribed by Parliament for this specific, heinous crime. The sentence imposed by the trial court was lawful.



74. In the final analysis, the appeal against conviction fails. The prosecution proved its case beyond reasonable doubt.
75. The appeal against sentence also fails, as the sentence imposed was the lawful and mandatory sentence prescribed by statute for this offence.
76. Accordingly, the orders of this court are as follows:
- i. The appeal against conviction is dismissed.
 - ii. The appeal against sentence is dismissed.
 - iii. The conviction and the sentence of life imprisonment imposed by the trial court are hereby upheld.
77. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 4TH DAY OF DECEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

State Counsel:.....

Appellant:

