Langat v Republic (Criminal Appeal E003 of 2021)
[2025] KEHC 17962 (KLR) (3 December 2025) (Judgment)

Neutral citation: [2025] KEHC 17962 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL APPEAL E003 OF 2021

HI ONG'UDI, J

DECEMBER 3, 2025

BETWEEN

PETER KIPSANG LANGAT ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal from the Judgment in Molo Chief Magistrate's Criminal Case S. O. No. 47 of 2018 delivered on 10th February, 2021 by Hon R. Yator, Principal Magistrate)

JUDGMENT

1. Peter Kipsang Langat hereinafter referred to as 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 particulars were that the appellant on 8th December, 2017 and 12th January, 2018 at Keringet township in Kuresoi south sub-county within Nakuru county intentionally and unlawfully caused his penis to penetrate the vagina of F. C. a child aged 15 years. He also faced an alternative count of indecent act with a child.

2. He denied the charges and the case proceeded to full hearing with the prosecution calling four (4) witnesses. When placed on his defence he gave unsworn evidence without calling any witness. In the Judgment delivered on 10th February, 2021 by the trial Magistrate Hon R. Yator the appellant was found guilty and convicted on the main count of defilement. She sentenced him to 15 years imprisonment to run from 17th May, 2018 being the date when he was remanded in custody.

3. Being dissatisfied with the Judgment he filed his appeal citing 5 grounds which he later amended to read as follows:

    a. That, the learned trial magistrate erred in law by imposing the harsh sentence of 15 years imprisonment but failing to consider the major circumstance.

b. That, the learned trial magistrate erred both in law and fact by convicting the appellant when the case against him had not been proved beyond responsible doubts.

c. That, the learned trial magistrate erred both in law and fact by holding that the offence of defilement could be approved when the act of penetration was not proved as against the appellant.

d. That, the learned trial magistrate erred both in law and fact by failing to give the appellant defence of affair, objective and open-minded analysis and erred grievously by placing the burden of proof to the appellant in a criminal case.

4. A summary of the case before the trial court was that PW1 (aged 15 years) who gave unsworn evidence said on 12th January, 2018 at 8pm she was in the house with her younger brother JK when they heard a knock at the door. The door opened and Peter Kipsang who she identified as the appellant was at the door. He was their neighbor. He invited PW1 to his house and she went. She knew he had a wife and children. They watched T.V and later he pushed her to the bed, she removed her clothes, pant and skirt and he too removed his clothes. He inserted his penis into her vagina without a condom. When he finished he gave her shs 100/= and she went back home. He had threatened to strangle her if she screamed. The appellant's wife and children were not in the house that night.

5. The next day he came for her again while she was in the house with her younger brother. She went with him to his house and they had sex. This went on for close to a week. In March, 2018 she missed her periods and she informed her sister, S who took her to hospital. It was confirmed she was pregnant. She informed the appellant and her parents and the matter was reported at Keringet police station. She later delivered a baby on 18th September, 2018.

6. In cross examination she said she last had sex with the appellant on 13th January, 2018 and she had her last periods on 12th January, 2018. She denied there being any disagreement between the appellant and herself.

7. PW2 Judith Chepng'eno a clinical officer at Keringet sub-county hospital with 7 years' experience at the time, prepared a P3 for PW1 and the appellant, on 29th March, 2018. PW1 was found to be 26 weeks pregnant. She produced the P3 forms in respect of PW1 and appellant as EXB 2 and 3 respectively.

8. PW3 PC is the mother to PW1. She testified that on 23rd March, 2018 she noticed that PW1 was pregnant and learnt that the person responsible was the appellant. She said PW1 had conceived when she went for a night vigil with another lady whose name she did not give. That PW1 told her the appellant had not defiled her before. She further stated that after the appellant's arrest he took PW1 to hospital and it was confirmed she was pregnant.

9. PW4 – No. XXX Cpl John Nyaberi the investigating officer said he received PW3's report on 29th March, 2018 which report was confirmed by PW1. He said PW1 identified the appellant as the defiler. He produced PW1's birth notification (Exb 4a) and a document from school (Exb 3). He took samples to Kisumu Government Chemist for DNA testing. He produced the report on DNA testing dated 12th May, 2020 and the exhibit memo dated 24th July, 2019 as Exb 5a & b. He confirmed that the DNA results were negative.

10. In his unsworn defence the appellant said on 5th May 2018 he was collecting rent when PW1 told him to wait for rent from the girl who had gone to do stock at their bar. No rent was brought by evening. However, the next day PW1 gave her Kshs 400/= leaving a balance of Kshs 400/= The following day Kshs 300/= was paid. Nothing more was paid so the land lord directed him to lock the house of PW3

which he did on 9th May, 2018. After all this, PW3 moved out of the house on the night of 11th May, 2018. He was then arrested on 14th May, 2018. He denied the defilement claims.

11. The appeal was canvassed by way of written submissions.

Appellant's submissions

12. Generally, the appellant submitted that the age of PW1 was never proved. Secondly that there was never proof of the element of penetration. On these two ingredients he relied on the case of *Wainge Elias Kasomo V Republic* Criminal Appeal No. 504 of 2010. He insisted that this case was planted on him and yet even the DNA did not prove that he was the father of the baby. He insisted that he was fabricated because of the collection of rent as the agent of the houses in the area.

13. Referring to the case of *Elizabeth Waithiegeni Gatimu V Republic* 2015 eKLR he argued that what he had said raised a doubt in this case and he should benefit from it. He also lamented that the sentence meted out on him was too harsh.

Respondent's submissions

14. These were filed by M/s Emma Okok principal prosecution counsel and are dated 2nd May, 2025. Counsel identified two issues for determination namely:

    i. Whether the offence of defilement was proved beyond reasonable doubt

    ii. Whether the sentence meted by the trial court was proper in the circumstances

15. On the element of penetration counsel referred to the entire evidence of PW1, PW2 and PW3. She said when PW1 was examined at the hospital she was already pregnant. She told her mother (PW4) that the appellant defiled her in December, 2017 during the night vigil. Further that PW1 had told PW4 that the appellant had been defiling her between December 2017 – 12th January, 2018.

16. Referring to the DNA which was done after PW1 had delivered the baby and the samples taken from PW1, appellant and the baby were subjected to the DNA. The results exonerated the appellant and she submitted that the case before court was on defilement and not paternity. Reference was made to the case of *AML V Republic* [2012] eKLR where the Court of Appeal stated thus:

> " The fact of rape or defilement is not proved by way of a DNA test but by way of evidence"

Further in Evans Wanjala Wanyonyo V Republic [2019] KECA 779 KLR the same Court of Appeal status thus:

> " An essential ingredient in the offence of defilement is penetration not impregnation... .....whether the victim of a sexual offence is impregnated or not is irrelevant to the ingredient of the offence of defilement".

17. She argued that PW1 was clear on who had defiled her. Further that PW1 was born on 25th December, 2993, (Exb 4(a) and that she was about 14 years old at the time of incident. That this fell in the bracket of section 8(3) of the *Sexual Offences Act*.

18. On identification she referred to the evidence of PW1 and PW3 who said the appellant was their neighbor on the plot where they lived. Thus, he was known to them.

19. Counsel submitted that the defence by the appellant was mere denial and did not rebut the prosecution case.

20. On sentence counsel referred to section 8(3) of the *Sexual Offences Act* which provided for a minimum sentence of twenty (20) years imprisonment. She argued that the sentence of 15 years was passed before the Supreme Court decision in *Republic V Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* Petition E018 of 2023) [2024] KESC 34 (KLR). She urged the court not to interfere with the conviction and sentence and dismiss the appeal.

Analysis and determination

21. I have carefully considered the record of appeal, the amended grounds of appeal and the submissions by both parties and the law. I find the issue for determination to be whether the charge of defilement was proved against the appellant.

22. This being a first appeal, this court has a solemn duty to reexamine and reconsider all the evidence adduced before the trial court and arrive at its own conclusion based on the law. It should remember that it never heard nor saw the witnesses and give an allowance for that. This was the holding in *Okeno V Republic* 1972 EA 32 at 36 where the Court of Appeal stated:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya V Republic* (1957) E.A 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M. Ruswala V Republic* [1957] E.A 570). It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions. It must make its own findings and draw its own conclusions. Only then can it decide whether the Magistrate's findings should be supported".

23. Section 8(1) of the *Sexual Offences Act* defines defilement as follows :

> A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
>
> To prove the offence of defilement the following ingredients MUST be proved:
>
> i. Age of victim
>
> ii. Penetration of the victim's genital organ
>
> iii. Identity of the perpetrator

24. Further section 2 of the *Sexual Offences Act* defines "Penetration" as follows:

> " The partial or complete insertion of the genital organs of a person into the genital organs of another person"

25. The appellant has raised issues about PW1's age. PW3 who is PW1's mother told the court the child was born on 25th December, 2003. Produced before the court were two documents Exb 4a & b – requesting for late registration of birth. They were from PW3 and the Head teacher of [Particulars Withheld] Junior School where PW1 was a student. They both indicate PW1's date of birth as 25th December, 2003. The alleged first encounter between the appellant and PW1 was on 8th January, 2018. By then PW1 was 14 years and about 2 weeks. When she testified before court on 28th January, 2019 – she was 15 years plus one (1) month old. That is what she told the court.

26. The charge sheet shows that the offence occurred between 8th December, 2017 and 12th January, 2018. The calculation of the age of PW1 confirms that her age then fell under the ages covered under section 8(3) of the *Sexual Offences Act*. I therefore find that age was proved.

27. The next ingredient which must be established is penetration which is equally defined under Section 2 of the *Sexual Offences Act* as cited above. From the evidence of PW1 she was enjoying having sex with the man who came for her. I say so because from her evidence the man came for her severally from their house and she would go with him without any struggles. And after the ordeal she would go back home. It was also only after the first ordeal that she was given Shs 100/=. The rest of the encounters were not rewarded at all. She never shared the encounters with anyone until she missed her periods. It's then that she realized that there was a problem.

28. The examination at the hospital by PW2 confirmed the child was pregnant and of course her hymen was broken. I therefore find that the ingredient of penetration was proved.

29. The DNA profiling has also been raised by the appellant. As is so well put by counsel Okok, the issue here is defilement but who did it and not who the father of PW1's baby is. The Court of Appeal cases of *AML V Republic* (*supra*) and Evans Wanjala Wanyonyo (*supra*) are relevant here. I am duly guided.

30. The last ingredient is on identification. PW1 and PW3 told the court that the appellant was their neighbor on the plot, a fact the appellant never denied. Secondly the appellant in his defence said he used to collect rent for the landlord and he disagreed with PW3 over non-payment of rent. That he even locked PW3's children outside their house for non payment of rent.

31. Upon cross examination of PW1 the only question he asked her on these allegations was whether he had disagreed with her parents which she responded in the negative and said her parents were away in Eldoret. PW3 who is supposed to have been the appellant's target was not asked anything in cross-examination about rent, locking out of her children for non payment of rent. These were critical issues which he ought to have raised but did not. The conclusion is that there was nothing about grudges between the appellant and PW3's family, and therefore PW1 had no reason to make her lie against him.

32. Being a neighbor, he knew that PW1's parents were not around and so was his wife and children. He took the opportunity to exploit PW1 sexually. The appellant was therefore well identified by PW1.

33. As a whole I find that the trial Magistrate analyzed the evidence well and arrived at the correct conclusion. I find no reason to make this court interfere with the conviction.

34. Coming to the sentence, the mandatory minimum sentence under section 8(3) of the *Sexual Offences Act* is twenty (20) years. The Appellant is lucky to have escaped with fifteen (15) years imprisonment since his case was determined in February, 2021 before the Supreme Court decision in *Republic V Mwangi & others* (*supra*) on mandatory minimum sentences. The trial Magistrate also complied with section 333 (2) of the *Criminal Procedure Code*, in sentencing.

35. The upshot is that the Appeal lacks merit and is hereby dismissed. The lower court conviction and sentence are upheld.

    Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 3RD DAY OF DECEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE