



REPUBLIC OF KENYA



**KENYA LAW**  
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**Misiko v Republic (Criminal Appeal E016 of 2025)  
[2025] KEHC 18087 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL APPEAL E016 OF 2025  
KW KIARIE, J  
DECEMBER 3, 2025**

**BETWEEN**

**GEOFFREY JUMA MISIKO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in the S.O. Case NO. E015 of 2023 of the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa-Senior Principal Magistrate)*

**JUDGMENT**

1. Geoffrey Juma Misiko, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence are that on the 23<sup>rd</sup> day of May 2020 at [Particulars Withheld] Village, South Kipipiri Sub-County, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of P.W.K., a child aged fifteen years.
3. The appellant was sentenced to serve twenty years' imprisonment. He was aggrieved and filed this appeal against the conviction and sentence. He raised the following grounds of appeal:
  - a. The learned trial magistrate erred in matters of law and facts by convicting me, whereas all the elements of defilement were not conclusively reached upon.
  - b. The learned trial magistrate erred in a matter of law by convicting on inadequate evidence.
  - c. The learned trial magistrate erred in matters of law and facts by failing to note that the prosecution's case was not proved beyond a reasonable doubt.
  - d. By merits of the case and other emerging jurisprudence, a 20-year imprisonment term is harsh and inappropriate under the circumstances of the case.



4. The state conceded the appeal through Odero Vena because the complainant gave contradictory evidence.
5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, having neither seen nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
6. An offence of defilement is established against an accused person when the prosecution has proved the following ingredients:
  - a. That there was penetration of the complainant's genitalia;
  - b. That the accused was the perpetrator and
  - c. The victim must be below eighteen years old.

This position was echoed in the case of *Fappyton Mutuku Ngui vs Republic* [2012] eKLR. Ngugi J. (as he was then) said:

Going by this definition of defilement... the issues which the court needs to determine...first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child, and finally, whether the penetration was by the Appellant.

7. I will determine if the prosecution proved these ingredients to the required standards.
8. The copy of the Certificate of Birth that was produced indicates that P.W.K. (PW1) was born on the 27<sup>th</sup> day of April 2005. As of May 23, 2020, she was one month shy of her 15th birthday. Her age was therefore proven.
9. The medical evidence adduced by Dr Karanja Newton (PW2). His evidence was that, when she examined the complainant on May 25, 2020, nothing abnormal was observed, except that the complainant had a broken hymen with old tags. A broken hymen alone cannot serve as proof of penetration. This was also the view of the Court of Appeal in the case of *P. K.W vs Republic* [2012] eKLR. The court observed as follows:

“ 15. In their analysis of the evidence on record, the two courts below do not seem to have directed their minds to these details. They appear to have placed a high premium on the finding that the child's hymen had been broken. Was this justified” Is hymen only ruptured by sexual intercourse.

16. Hymen, also known as vaginal membrane, is a thin mucous membrane found at the orifice of the female vagina (sic) with which most female infants are born. In most cases of sexual offences we have dealt with, courts tend to assume that absence of hymen in the vagina of a girl child alleged to have been defiled is proof of the charge. That is, however, an erroneous assumption. Scientific and medical evidence has proved that some girls are not even born with hymen. Those who are, there are times when hymen is broken by factors other than sexual intercourse. These include insertion into the vagina of any object capable of tearing it, like the use of tampons, masturbation injury, and medical examinations can also rupture the hymen when a girl engages in vigorous physical activity like horseback riding, bicycle riding, and gymnastics,



there can also be a natural tearing of the hymen. See the Canadian case of *The Queen vs Manuel Vincent Quintanila* [1999] AB QB 769.”

10. If the alleged defilement took place on the 23rd of May 2020, then there was no way the broken hymen could have old tags. This possibly explains why the complainant kept changing her stance. At one point, she alluded to having had relationships with other men and mentioned that they did nothing with the appellant. The Court of Appeal in the case of *Ndungu Kimanyi vs Republic* [1979] KLR 283 (Madan, Miller and Potter JJA) held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, raise suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

11. It was unsafe to rely on the complainant’s evidence for a conviction. The conviction is quashed, and the sentence is set aside. The appellant is released unless otherwise lawfully detained.

**DELIVERED AND SIGNED AT NYANDARUA ON THIS 3<sup>RD</sup> DAY OF DECEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

