



**Wanjiru v Republic (Criminal Appeal E013 of 2024)
[2025] KEHC 18088 (KLR) (Crim) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E013 OF 2024
KW KIARIE, J
DECEMBER 3, 2025**

BETWEEN

PATRICK MUNENE WANJIRU APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in the S.O. Case NO. E029 of 2023 of the Principal Magistrate's Court at Engineer by Hon. E.N. Wanjala-Principal Magistrate)

JUDGMENT

1. Patrick M Wanjiru, 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 27th day of November 2023 at particulars withheld, Kinangop Sub-County, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of M.A.M., a child aged three years.
3. The appellant was sentenced to serve forty 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 law in convicting the appellant, as he failed to appreciate that the medical evidence did not connect me to the offence.
 - b. The learned trial magistrate erred in law by convicting the appellant, yet failed to appreciate that age was not proven according to the law.
 - c. The learned trial magistrate erred in law in convicting the appellant based on evidence which was otherwise contradictory and uncorroborated.



- d. The learned trial magistrate erred in law in convicting the appellant, yet failed to appreciate that it was not conclusively proven whether or not it was the appellant who penetrated the complainant.
4. The state did not file any grounds of opposition and submissions.
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, considering I neither saw 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. M.A.M. (PW2), the complainant, was three years old at the time of the incident. Her birth notification card shows she was born on 9 January 2020. As of 27 November 2023, the complainant was three years and ten months old. Her age was verified to meet the required standards.
9. M.A.M. (PW2), in her evidence in chief, testified as follows:

I am M.A.M. My mother is J.W. My brother is V.K. M wronged me. M tied my hands and legs 'alinilola'. M placed his kasusu between my legs, where my susu comes from. M was wearing trousers when he removed his trousers; he did not remove my dress. I was putting on trousers. I was putting on trousers and pants. He bends my head; I did not fail, that is when he caused me to feel pain in my susu. When he bends me, he said he will throw me in the mud. My kasusu did not bleed. No one wiped my kasusu at that time. I don't have a kasusu. I urinate in a normal toilet. M is the one who touched my kasusu. He removed my trousers and panty. M touched my sus while he was bending. I was bent by M at the time. I did not cry, I screamed. When I screamed, a man called K came, and he beat M. I disappeared. When Mum came back, I told her, I told her at night. M used to live at our place. His house is near the gate. I want us to put M in a hole. He is a bad man. When M removed my clothes and he put susu in mine., Abby and... were outside playing, never went to the house, and also went to the house. The black rope is what M tied to my hands and my legs. I have not seen it. M never buys me sweets and cake. M is the one before the court. She points at the accused and ... and looks very scared. M, the one before, is the one who did bad to me.

10. The complainant was approximately three years old at the time. We recognise that, given her age, she might not have been able to precisely describe in court what happened. When she testified that her hands and legs had been tied, K, who, according to her evidence, rescued her, was a crucial witness.



He would have identified the perpetrator and the position in which he found the complainant and her attacker. The investigating officer missed a valuable opportunity to uncover the truth in this case.

11. It is confusing when the complainant testified that she did not bleed from her genitalia. Given her age and being defiled by an adult, the expectation was that she would have suffered serious injuries to her genitals.
12. There is a possibility that, indeed, the complainant was sexually molested, but who did it?
13. The complainant's mother's (PW1) evidence was that she left the complainant under the care of her sister, who was in form two on 27th November 2023. The following day, while she was washing the complainant, she began to cry. The child did not want her to touch her genitalia. Upon enquiry, she disclosed that the appellant had defiled her. She did not inform the court of the source of the rest of her testimony. Since she did not witness the incident, this was inadmissible hearsay.
14. The medical evidence adduced by Dr Patrick Wakahiu (PW3) on behalf of Dr Eunice Maina, who examined the complainant on the 30th day of November 2023. She observed that the hymen was freshly broken.
15. Patrick M Wanjiru, the appellant, pleaded an alibi and denied any involvement in the offence. When an accused raises an alibi defence, they do not assume any burden to prove that it is the truth. This was stated in the case of *Kiarie vs Republic* [1984] KLR, where the Court of Appeal held:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

16. The complainant's mother's sister, who was said to be about 17 years old and had been left in charge of the complainant, was not called to testify. Mama Njeri, whom the investigating officer said saw the complainant bleed from her mouth, was not called to testify, nor was K, whom the complainant said went to her rescue when she screamed. No explanation was given to the court. The Court of Appeal for East Africa, in *Bukenya vs Uganda* [1972] EA 549 (Lutta Ag. Vice President) held:

The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.

Where the evidence called is barely adequate, the Court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution.

17. These three were material witnesses, and withholding their evidence from the court would lead to the inevitable conclusion that their evidence would not be in favour of the prosecution's case. This, coupled with the complainant's age and the obvious inconsistencies in her evidence, would render the appellant's conviction unsafe. Consequently, 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 3RD DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

