



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL APPEAL NO. E014 OF 2025

WILSON GITHUKU KIMANI.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in the S.O. Case NO. E057 of 2022 of the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa -Senior Principal Magistrate)

JUDGMENT

1. Wilson Githuku Kimani, 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 in the month of February 2022 at Mitiiri, Kinangop Sub-County, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of E.W.G., a child aged twelve years.
3. The appellant was sentenced to serve fifteen 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 and fact by convicting the appellant, but failed to note that the ingredients of the offence were not conclusively proved.
 - b) The learned trial magistrate erred in law and fact, and by convicting the appellant, yet failed to find that his defence was cogent and believable.
 - c) The learned trial magistrate erred in law and fact by sentencing the appellant to a sentence that is not only harsh but also excessive compared to the circumstances of the offence.
 - d) The learned trial magistrate erred in law and fact by convicting the appellant, but failed to note that evidence of identification by recognition of the appellant was not positively proved.

4. The state opposed the appeal through M/s Odera Vena, prosecution counsel. She argued that the offence was proven to the required standards and that the sentence was appropriate.
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. A copy of the certificate of birth of the complainant was produced. It indicates that she was born on the 19th day of August 2009. As of February 2022, she was 12 years and 5 months old. Her age was therefore proven.
9. E.W.G. (PW1) stated that in February 2022, on an unspecified date, her mother sent her to the shop around 6 p.m. She encountered the appellant, who then dragged her into a forest and forcibly defiled her. He threatened her with death if she revealed the incident. The complainant was familiar with him because he was her neighbour's employee.
10. She maintained her secret until her sister and sister-in-law suspected she was pregnant. They collected a urine sample for testing, and upon learning the results, she revealed what had happened.
11. Dr Patrick Maina Wakahiu (PW3) adduced the medical evidence. The findings were a broken hymen. She was pregnant.
12. From the findings, the prosecution proved penetration to the required standards.

13. The complainant stated that the appellant was the one who defiled her, and her testimony was unchallenged. Along with her pregnancy, this evidence confirmed her assertion that she was defiled and who the perpetrator was.
14. I find that the conviction of the appellant was based on sound evidence.
15. The appeal is dismissed for want of merit.

Delivered and signed at Nyandarua on this 18th day of December 2025

**KIARIE WAWERU KIARIE
JUDGE**