



REPUBLIC OF KENYA



KENYA LAW
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**Kiragu v Republic (Criminal Appeal E038 of 2025)
[2025] KEHC 18579 (KLR) (Crim) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E038 OF 2025
KW KIARIE, J
DECEMBER 17, 2025**

BETWEEN

ELIJAH KARIUKI KIRAGU APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in the S.O. Case NO. E021 of 2023 of the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa-Chief Magistrate)

JUDGMENT

1. Elijah Kariuki Kiragu, 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 diverse dates between the year 2022 and 7th September 2023 at [Particulars withheld] village, North Kinangop Sub-County, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of MWW, a child aged sixteen 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 both in law and fact when he failed to observe that the prosecution did not prove its case to the required standard needed in law.
 - b. The trial magistrate erred in law and fact in finding that the evidence of the victim was credible, which was not supported by the evidence.



- c. The trial magistrate erred both in law and in fact in convicting the appellant on flimsy and frivolous allegations.
 - d. The learned trial magistrate erred in both matters of law and fact by failing to consider the appellant's defence.
4. The state opposed the appeal through M/s Odero Vena, prosecution counsel. She contended that the offence was proved 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. The baptismal card of the complainant shows that she was born on the 10th day of June 2007. Dr Patrick Maina Wakahiu (PW3), who examined her, estimated her age at 16 years. The estimate and the details on the baptismal card confirm her age as of 7th September 2023 as 16 years. Her age was therefore proven.
9. MWW (PW1) testified that in the year 2022, the appellant went and informed her grandmother that he wanted to marry her. Her grandmother allowed her to take her clothes. They went on to live as husband and wife until they were both arrested. They had sexual intercourse, and she conceived.
10. The appellant did not deny this fact, and while mitigating, he stated that they had a child out of their relationship.
11. The appellant highlighted that the complainant told him she was an adult during mitigation. If he had brought up this point during the hearing, the trial magistrate would have evaluated it to determine whether a reasonable person might have been misled into believing she was an adult. This came too late in the day.
12. The appellant acted under a mistaken belief that the complainant's grandmother had sanctioned their relationship. The complainant lacked the capacity to contract a marriage.



13. Section 8 (4) of the *Sexual Offences Act* provides:

A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

14. The appropriate sentence was meted out, and I have no reason to interfere with it.

15. The appeal is dismissed.

DELIVERED AND SIGNED AT NYANDARUA ON THIS 17TH DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

