Keitany v Republic (Criminal Appeal E006 of 2025)
[2025] KEHC 18340 (KLR) (Crim) (15 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18340 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYANDARUA

CRIMINAL

CRIMINAL APPEAL E006 OF 2025

KW KIARIE, J

DECEMBER 15, 2025

BETWEEN

FRANCIS KANGOGO KEITANY ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the original conviction and sentence in S.O. Case No. 99 of 2019 of the Chief Magistrate's Court at Nyahururu by Hon. S.N. Mwangi–Senior Resident Magistrate)

JUDGMENT

1. Francis Kangogo Keitany, the appellant herein, was convicted of the offence of defilement of a girl contrary to section 8 (2) of the *Sexual Offences Act* No. 3 of 2006.

2. The particulars of the offence were that on the 9th day of August 2019, at [Particulars Withheld] in Muchongoi division of Marigat sub-county within Baringo County, the defendant intentionally caused his penis to penetrate the anus and the vagina of M.C., a child aged four years.

3. The appellant was sentenced to serve life imprisonment. He has appealed against both conviction and sentence. He was in person. He raised the following grounds of appeal:

    a. The learned trial magistrate erred in law and fact by convicting the appellant with inconsistent evidence, conspiracy and fabrication against the appellant.

    b. The learned trial magistrate erred in law and fact by convicting the appellant, and yet the identification was not proved.

    c. The learned magistrate erred in law and fact by convicting the appellant, yet failed to consider the fact that the sentence was excessive and harsh in relation to the weight of the cases.

4. The state conceded to the appeal through M/s Odera Vena, learned counsel, because:

    a. PW 4 relied on the PRC form to fill the P3 form, but did not examine the victim.

    b. The maker of the PRC form was not available to testify, diminishing the reliability of the P3 form, which was produced as an exhibit.

5. This court is an appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses give their testimonies. Therefore, I will follow the well-known case of Okeno vs Republic [1972] E. A 32 to guide my decision-making process.

6. Section 8(1) of the *Sexual Offences Act* defines defilement in the following terms:

> A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

An offence of defilement, therefore, 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.

These are the ingredients that the prosecution must prove against an accused person.

7. M.K.(PW1) is the complainant's mother. Her evidence was that her daughter was four years old, but she had a birth certificate. The medical evidence adduced by Harrison Karuri Macharia (PW4) indicates that she was 4 years old. The victim's age was therefore proven to meet the required standards.

8. The evidence of M.K. (PW1) was that when she went to fetch some firewood, she left the complainant at their home area. The appellant was left nearby.

9. When she returned home, her daughter was still crying, and she believed it was because she had left her. After the complainant had eaten, she informed her that she was experiencing pain in her genital area. She accused the appellant of defiling her. The complainant was taken to the hospital, and the appellant was arrested.

10. The complainant, in her evidence, identified the appellant as the person who "beat" her in her genital area.

11. Harrison Karuri Macharia (PW4) produced a P3 form. The child had a swollen pubic area. There was dry discharge from the vulva, and the hymen was broken. Although he produced the P3 form, he did not examine the child himself. The child was examined by another officer, Leah Wangui Maina. He relied on the PRC form to fill out the P3 form and concluded that there was penetration. Section 77 (1) of the *Evidence Act* provides:

> In criminal proceedings, any document purporting to be a report under the hand of a Government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence.

12. Francis Kangogo Keitany, the appellant, denied that he defiled the complainant.

13. In her innocence, the complainant described the defilement as "beating." She identified the appellant as the perpetrator. The proviso to section 124 of the *Evidence Act* states:

> Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

14. After reviewing the evidence on record, I conclude that the complainant's testimony needed additional confirmation regarding the perpetrator's identity and proof of penetration. PW1 stated her daughter had told her that Francis had defiled her; however, in court, the child identified the defendant as Kangogo. The prosecution did not attempt to clarify whether the complainant knew him by any other name. Although she identified him as Kangogo in court, the perpetrator's identity, considering the complainant's age, was not sufficiently proven.

15. The complainant (PW2) described the incident as a beating. Her mother testified that while bathing her, she noticed sperm on her pants and saw a crack in her genitals. The pants were taken to the police, but they were apparently not analysed. No crack on the genitalia was noted during the examination.

16. Harrison Karuri Macharia (PW4) evidence was based on the examination of Leah Wangui Maina's examination. The PRC form she completed was not produced to allow the court to review it and form its opinion. This was an unsatisfactory way of adducing evidence concerning such a serious offence.

17. Based on the foregoing, I agree with the prosecution that the appellant's conviction was unsafe. The conviction is quashed, and the sentence is set aside. The appellant is released unless lawfully detained otherwise.

DELIVERED AND SIGNED AT NYANDARUA, THIS 15TH DAY OF DECEMBER 2025

KIARIE WAWERU KIARIE

JUDGE