



**Lairenge v Republic (Criminal Appeal E022 of 2024)  
[2025] KEHC 18184 (KLR) (Crim) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18184 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CRIMINAL  
CRIMINAL APPEAL E022 OF 2024  
SC CHIRCHIR, J  
DECEMBER 3, 2025**

**BETWEEN**

**KINGUNYA LAIRENGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence in Isiolo Criminal  
S.O.No. E017 of 2023 by Hon. M.A. Odhiambo (CM) on 31st Jan, 2025)*

**JUDGMENT**

1. The Appellant was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of *Sexual Offences Act* No.3 of 2006. (The Act). The particulars of the offence were that on 14<sup>th</sup> July 2023 at Kiwanjani area in Isiolo Sub – County caused his penis to penetrate the vagina of B.K a child aged 8 years. He also faced an alternative charge of indecent act with the child contrary to Section 11 (1) of the Act, by unlawfully touching B.K’s vagina.
2. The Appellant was tried, convicted on the main charge, and sentenced to life imprisonment.

**Petition of Appeal**

3. Being dissatisfied with the conviction and sentence, the Appellant moved to this court on Appeal and in his amended petition he has raised the following five grounds:
  - a. That the learned trial magistrate erred in law and fact by failing to note that the charge sheet was defective.



- b. That the learned trial magistrate erred in law and fact by failing to note that there was variance in evidence adduced before court, since the OB indicate that the offence was reported on 4/8/2023 contrary to their testimonies before court.
  - c. That the learned trial magistrate erred in law and fact by failing to note that the prosecution failed to prove their case beyond reasonable doubt.
  - d. That the learned trial magistrate erred in law and fact by failing to note the charges were framed due to vendetta between the Appellant and the mother of the complainant.
  - e. That the learned trial magistrate erred in law and fact by failing to consider the Appellant defense
4. The Appeal was heard by way of written submissions.

### **Appellant's submissions**

5. The Appellant submits that whereas the charge sheet shows the complainant's initials as B.K, it came out during the hearing that her initials ought to have been BG. He argues that the defect is not curable under section 382 of the criminal procedure code(CPC) and that it caused him prejudice.
6. It is further submitted that there was variance between the particulars of the charge sheet and the evidence adduced. He states that whereas according to the charge sheet the offence took place on 14<sup>th</sup> July 2023, according to the same charge sheet the offence was reported on 4<sup>th</sup> August 2023.
7. It is submitted that the credibility of PW2 , the complainant's mother was in doubt because while she alleged that the appellant had defiled the complainant , she did not provide any evidence of such defilement.
8. The Appellant further submits that penetration was not proved as the evidence of the clinical officer was not sufficient

### **Analysis and determination.**

9. This being a first Appeal, this Court has a duty to evaluate the evidence, analyze it afresh and draw its own conclusion, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify as did the trial Court. In *Okeno vs. Republic* [1972] EA 32, the Court of Appeal for East Africa had the following to say in this regard:

“ An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination ... and to the appellate court's own decision on the whole evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions...It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses...”

10. From the perusal the submissions, the trial record, and the petition of Appeal, I consider the following to be the issues requiring determination:
  - a). whether the offence of defilement was proved.
  - b). whether the charge sheet was defective



- c). whether the charges were instigated by the complainant's mother due to pre-existing dispute and whether the Appellant's defence was considered

### **Whether the offence was proved**

11. It is trite law that for the accused to be convicted of the offence of defilement, certain ingredients must be proved. The first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child; and finally, whether the perpetrator was identified. ( see: Charles Wamukoya Karani vs. Republic (2015) eKLR,
12. The age of the complainant was established by way of an age assessment report dated 26<sup>th</sup> October, 2023. The child's age was placed at 8 years. In any event the age of the child is not an issue in this Appeal. The identity of the Appellant is equally not an issue in this Appeal. It therefore suffices to state that both the age of the child and the identity of the perpetrator was proved.
13. Penetration has been contested. The Appellant has argued that the medical evidence was insufficient; that there was no evidence of blood on the complainant's genitalia for instance.
14. Section 2 of the Act defines penetration to entail: - "partial or complete insertion of a genital organ of a person into the genital organ of another person." The medical evidence in form of the P3 form and and post- rape care report( PRC) show that the child's hymen was freshly broken, , she had lacerations on her vulva extending to the clitoris, she was walking with a limp. The medical examination was done on 15.7.2023. The medical evidence, which was hardly contested fully corroborated the complainant's evidence. on the Appellant's submission that there was no blood seen on the child's genitals, that assertion did not displace the clinical officer's testimony and the medical records presented. The clinical officer was an expert witness, and only a fellow expert could challenge her evidence. There was no expert evidence stating otherwise in this case.
15. In view of the foregoing am satisfied that all the ingredients of defilement were proved.

### **Whether the charge sheet was defective**

16. The discrepancy that has been pointed out by the Appellant is on the complainant's initials. The child was referred to as B.K instead of B.G. The contradiction is minor and immaterial. It is immaterial because, the identity of the victim was never brought to question. Further the complainant and the Appellant knew each other well; they were residing in the same house as the Appellant was the complainant's mother's live-in boyfriend.
17. Contrary to the Appellant's assertion such minor errors are curable under section 328 of CPC. The same conclusion applies to the alleged discrepancies on dates. The existing scenario as can be seen from the charge sheet was that the incident happened on 14. 7.2023, it was reported on 15.7.2023 and the Appellant was arrested on 4.8.2023. There is no contradiction at all. The Appellant might have wanted to question why it took a while for him to be arrested, but he did not, and this court therefore has no reason to get into that .

### **Whether the Appellant's defence was considered and the charge was ill- motivated**

18. Although the Appellant raised the issue of his defence not being considered in his ground of Appeal, he did not submit on it. However, the record shows that on paragraph 13 of her judgment the trial magistrate considered his defence. And the defence was that the complainant's mother framed him because of their own disagreement relating to their love affair. The trial magistrate found the defence incredible. I have no hesitation in arriving at the same conclusion, as his defence did not shake the fact of



defilement as proved by medical evidence, and his identification by the complainant, as the perpetrator of the crime.

19. The Appeal is devoid of any merit. It is hereby dismissed.

**DATED , SIGNED AND DELIVERED AT ISIOLO THIS 3<sup>RD</sup> DAY OF DECEMBER 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:

Roba Katelo- court Assistant

The Appellant

Mr. Ngetich for the Respondent.

