



**Njeri v Republic (Criminal Appeal E003 of 2025)  
[2025] KEHC 18680 (KLR) (Crim) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18680 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL E003 OF 2025  
KW KIARIE, J  
DECEMBER 18, 2025**

**BETWEEN**

**DANIEL MWAI NJERI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Daniel Mwai Njeri, the appellant herein, was convicted of the offence of attempted defilement contrary to section 9 (1) as read with section 9(2) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence were that on the 17<sup>th</sup> day of March 2020, at Ndemi area, Kipipiri sub-county, within Nyandarua South sub-county of Nyandarua County, he intentionally attempted to cause his penis to penetrate the vagina of M.W.N., a girl aged 2 years 4 months.
3. The appellant was sentenced to 9 years' imprisonment. He has appealed against the conviction. He was in person and raised the following grounds of appeal:
  - a. The trial magistrate erred in law and fact by admitting medical documents that were not genuine.
  - b. The trial magistrate erred in law and fact by accepting the complainant's identification of the appellant as the perpetrator, which her mother prompted during the proceedings.
  - c. The trial magistrate erred in law and fact by allowing the prosecution to omit crucial witnesses who were allegedly present during the commission of the offence.



- d. The learned magistrate erred in law and fact in convicting the appellant when the evidence on record was manifestly insufficient, inconsistent, and had glaring gaps, hence incapable of sustaining a conviction.
  - e. The learned magistrate erred in law and fact in convicting the appellant against the weight of evidence on record.
  - f. The learned magistrate erred in law in failing to give due and/or adequate consideration to the appellant's defence.
  - g. The trial magistrate erred in law and fact by allowing biased testimony from all prosecution witnesses who testified, who were family members of the complainants.
  - h. The trial magistrate erred in law and fact by not considering the inexcusable delay in reporting the alleged offence to the police.
  - i. The trial magistrate erred in law and fact by accepting an inadequate and flawed investigation conducted by the authorities.
4. The state opposed the appeal through M/s Vena Odero, prosecution counsel, who contended that the offence was proven and that the sentence was appropriate.
  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 testify. Therefore, I will follow the well-known case of *Okeno v Republic* [1972] E. A 32 to guide my decision-making process.
  6. Section 9 (1) of the *Sexual Offences Act* provides as follows:  
A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.
  7. An attempt to commit a crime is defined in the Oxford Concise Law Dictionary (2nd Edition) as:  
Any act that is more than merely preparatory to the intended commission of a crime; this act is itself a crime.
  8. For an attempted offence to be committed, the actions complained of must pass the "but for" test.
  9. Black's Law Dictionary, on the other hand, defines the word attempt as follows:  
"The fact or an instance of making an effort to accomplish something, esp. without success.  
Criminal law. An overt act that is done with the intent to commit a crime but that falls short of completing the intended crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed."
  10. In *Benson Musumbi v Republic* [2019] eKLR, the court considered what needed to be proven regarding the elements of the offence of attempted defilement. It stated as follows:  
"The prosecution in an offence of attempted defilement must prove the other ingredients of the offence of defilement except penetration; it must prove the age of the complainant, positive identification of the assailant, and then prove steps taken by the assailant to



execute the defilement which did not succeed. Attempted defilement is as if it were a failed defilement, because there was no penetration."

11. An attempt is typically characterised as an inchoate offence. According to Black's Law Dictionary, a principal feature of this crime is that it can occur even if the substantive offence is not successfully consummated.
12. An offence of attempted defilement, therefore, is established against an accused person when the prosecution has proved the following ingredients:
  - a. The age of the complainant;
  - b. The overt act committed; and
  - c. Positive identification of the assailant.

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

13. The complainant's notification of birth indicates that she was born on the 20<sup>th</sup> September 2017. As of the 17<sup>th</sup> day of March 2020, she was 2 years and six months old. Her age was therefore established.
14. Dr Julius Murimi Ntwiga (PW4) Adduced medical evidence on behalf of Dr Karanja, who had examined the complainant on the 19<sup>th</sup> day of March 2020. The child's hymen was intact but had redness on the vaginal opening. High vaginal swab revealed spermatozoa. He therefore concluded that an attempted defilement had occurred.
15. The finding by the learned trial magistrate that attempted defilement was proven cannot be faulted.
16. V.K. (PW3) is the complainant's grandmother. She testified that on 17 March 2020, she had a fractured leg and was at home. Around 12 noon, the appellant arrived, and she asked him to fetch water. After a while, she sent Grace to get loose change for her. Grace went with the complainant, but upon her return, she was alone. She informed her that the complainant was with the appellant, who was buying her a cake. The appellant returned after about 30 minutes carrying the complainant.
17. PW3 directed the appellant to collect some bones she had bought. When she told the complainant to visit the appellant, she said she was experiencing pain. Upon asking about the pain's source, she pointed to her genital area. An examination revealed what appeared to be spermatozoa.
18. M.W.N (PW2), the complainant, testified that the appellant poked her in the genital area with what she described as a needle, after he had removed her trousers and panties.
19. Daniel Mwai Njeri, the appellant, contended that he was framed up due to a cash payment made by Ketraco as compensation. He called Salome Njeri Wang'ombe, his mother, who supported his claim.
20. PW3 testified that she called for the appellant's mother, who took the child to hospital. Although she denied taking the child herself, the claim for the compensation money lacked explanation as to why it would result in the appellant being falsely implicated. He was not a beneficiary. This defence was rightly dismissed.
21. Other than the complainant's evidence, the evidence of V.K. (PW3) is circumstantial. In the case of *Mohamed & 3 Others v Republic* [2005]1KLR 722, Osiemo, Judge, restated what circumstantial evidence is, as follows:

"Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence



of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved."

22. Earlier, in the case of Republic v Kipkering arap Koskei & Another 16 EACA 135, the Court of Appeal held:

"In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."

23. The evidence of PW3, together with the discovery of spermatozoa in the complainant's genitalia, is incompatible with the innocence of the appellant and cannot be reasonably explained by any hypothesis other than his guilt.

24. After analysing the evidence on record, I find that the prosecution proved its case against the appellant to the required standards.

25. The appeal is dismissed for want of merit.

**DELIVERED AND SIGNED AT NYANDARUA, THIS 18<sup>TH</sup> DAY OF DECEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

