Kanyi v Republic (Criminal Appeal E018 of 2021)
[2025] KECA 2163 (KLR) (11 December 2025) (Judgment)

Neutral citation: [2025] KECA 2163 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CRIMINAL APPEAL E018 OF 2021

W KARANJA, A ALI-ARONI & PM GACHOKA, JJA

DECEMBER 11, 2025

BETWEEN

SAMUEL MURITHI KANYI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Meru (RPV. Wendoh, J.) dated 2nd June 2015 in HCCRA No. 158 of 2011)

JUDGMENT

1. The appellant, Samuel Murithi Kanyi, was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. The particulars of the offence were that on 15th September 2009 at Kiongo location sublocation (sic) Kalutini village in Igembe District within Eastern Province, the appellant defiled V.K. a child aged 8 years.

2. The appellant also faced an alternative count of committing an indecent act with a child contrary to section 4 (1) of the *Sexual Offences Act*. The particulars of the offence were that on 15th September 2009 at Kiongo location sublocation (sic) Kalutini village in Igembe District within Eastern Province, the appellant indecently assaulted V.K. a child aged 8 years, by touching her thighs and vagina.

3. The appellant was arraigned before the trial court in Maua CMCCRC No. 3201 of 2009. He pleaded not guilty to both the main and alternative charges. After a full trial, the appellant was convicted on the main charge. He was sentenced to life imprisonment.

4. Those findings implored the appellant to pursue a first appeal before the Meru High Court in HCCRA No. 158 of 2011. The appellant lodged his petition of appeal on 19th October 2011. He raised the following grounds of appeal: that the trial magistrate erred by relying on evidence of identification by recognition; that the court erred by not finding that his constitutional rights were

infringed when the police held him for over 24 hours before he was arraigned before the court; that the court erred by relying on inconclusive medical evidence; that the prosecution evidence was riddled with inconsistences and contradictions; and that the trial court failed to consider his defence.

5. The trial court was cognizant of its role as a first appellate court, that is to analyze and evaluate the evidence afresh in order to arrive at its own determination. The High court considered the evidence afresh as well as the appellant's grounds of appeal. In her decision dated 2nd June 2015, Wendoh, J., dismissed the appeal on conviction and sentence.

6. The appellant has now filed a second appeal before us. He lodged his notice of appeal dated 15th June 2015 and filed a memorandum of appeal dated 7th January 2021. It raised six grounds impugning the findings of the High Court. We have summarized those grounds as follows: that the evidence adduced by the prosecution was filled with inadequacies, dissatisfaction, contradictions and inconsistencies and could not sustain a conviction; that his defence was disregarded without sufficient reason; and that the sentence of life imprisonment was harsh, excessive and failed to consider that he was a first offender. For those reasons, the appellant prayed that his appeal be allowed by quashing his conviction and setting aside his sentence.

7. This appeal was heard virtually on 4th September 2025. The appellant was virtually present while Principal ProsecutionVCounsel Miss Mengo was also present for the respondent. The appeal was canvassed by way of the parties' respective written submissions.

8. The appellant filed undated written submissions. He submitted that the prosecution failed to prove beyond reasonable doubt that he committed the offence of defilement. He argued that the evidence of the complainant was inconsistent and contradictory. He contended that the complainant was coached to peddle lies against him. He added that the conviction was based on speculations, conjectures, uncorroborated evidence, insufficient testimonies and that the investigations by the police were shoddy. Finally, he submitted that the sentence was harsh, unlawful and unconstitutional. For those reasons, he prayed that the appeal be allowed.

9. The respondent filed written submissions dated 11th August 2025 opposing the appeal. Miss Mengo submitted that all the ingredients to a charge of defilement, namely, the age of the complainant, the aspect of penetration and the positive identification of the assailant, were proved beyond reasonable doubt. She urged the Court to look at the totality of the evidence that was adduced; she was emphatic that there were

   no contradictions, inconsistencies or unsubstantiated evidence. She argued that the appellant's defence was considered but was properly rejected as misplaced. Lastly, on the sentence, Miss Mengo submitted that it was lawful and in line with section 8 (2) of the *Sexual Offences Act*. For those reasons, she prayed that the appeal be dismissed.

10. This is a second appeal. Section 361 of the Criminal Procedure Code limits our duty to consider only matters of law. Furthermore, we are called upon not to interfere with decision of trial court and the first appellate court on matters of fact, unless it is demonstrated that the two courts below considered matters they ought not to have considered, or that they failed to consider matters they should have considered or that looking at the evidence as a whole they were plainly wrong decision, in which case such omission or commission would be treated as a matter of law [see Manyeso vs. Republic [2023] KECA 827 (KLR).

11. The record before us shows that the evidence before the trial court was captured as follows: PW1 VK, testified that she was a 10-year-old pupil at Thaare primary school. Her evidence was that on 15th September 2009, she visited her aunt at 4:30 p.m. where she had been sent to collect her shoes.

12. On her way back, she met the appellant. The appellant inquired from PW1 about who her parents were. He then carried her and placed her on Nappier grass. He removed her underwear and placed it in her pocket. He lifted her skirt, pinned her down and inserted his penis in her vagina. The complainant's screams fell on deaf ears as the appellant continued to sexually assault her. After he was done, the appellant left her there.

13. PW1 got up, went home and informed her parents what had transpired. She then showed them where the crime scene was. She was later taken to Laare Hospital and the incident was reported at Laare Police Station. Though she did not know the appellant by name, she informed her parents that she had seen him on her way to the canteen on that fateful day.

14. PW2 Jane Mukiria, the complainant's mother, testified that she had sent PW1 to collect shoes from her aunt on 15th September 2009. On return, PW1 came crying and informed her that she had been defiled. PW2 observed that PW1's legs were splayed. On observing her private parts, PW2 noted that PW1 was bleeding. Her pant was tucked inside her pocket.

15. PW2 later proceeded to the scene in the company of PW1's father after PW1 informed them that she could positively identify the suspect. PW2 recalled that the appellant was arrested at the canteen as the perpetrator. She recognized him as an area resident. She maintained that they held no grudge against him.

16. PW3, PC Sara Wairimu, testified on behalf of the investigating officer, PC Lesuit from Laare Police Station. The report of the incident was received by the investigating officer at 8: 30 p.m. on 15th September 2009. On that very day, PW1 pointed out the accused as the perpetrator in the canteen to her father. Evidence was gathered and statements recorded. Thereafter, the appellant was arrested and charged with the present offence.

17. PW4 Dr. Muriungi Salesius Githee, a medical practitioner at Laare Hospital, testified that the complainant was brought to their facility on 15th September 2009. On examining her, PW4 noted that she had blood stained clothes. She had bruises, bleeding and a swollen vagina. Her hymen was perforated. He formed the opinion that she had been defiled. He filed the P3 form on that day. It was produced in evidence. He also produced the minor's treatment notes.

18. In his unsworn defence, the appellant's evidence was that he had been framed by Ntocienge because of a woman. Later, he was accosted after a cow incident and beaten by members of the public before he was arrested, arraigned and charged before the trial court. He maintained his innocence, stating that he did not commit the offence.

19. For the prosecution to succeed in a charge of defilement, the following conjunctive ingredients must be proved beyond reasonable doubt: the age of the complainant, penetration and the identity of the culprit. On the complainant's age, the P3 form and her medical notes indicated that the complainant was 8 years old at the time of the offence. This was in line with the facts set out in the charges sheet. This Court in the case of Mwalango Chichoro Mwanjembe vs. Republic [2016] KECA 183 (KLR) held as follows when determining the complainant's age.

> " The question of proof of age has finally been settled by recent decisions of this Court to the effect that it can be proved by documentary evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof. It has even been held in a long line of decisions from the High Court that age can also be proved by observation and common sense. See Denis Kinywa v R, Cr. Appeal No.19 of

> 2014 and Omar Uche v R, Cr. App. No.11 of 2015. We doubt if the courts are possessed of the requisite expertise to assess age by merely observing the victim since in a criminal trial the threshold is beyond any reasonable doubt. This form of proof is a direct influence by the decision of the Court of Appeal of Uganda in Francis Omuroni v Uganda, Crim. Appeal No.2 of 2000. We think that what ought to be stressed is that whatever the nature of evidence presented in proof of the victim's age, it has to be credible and reliable."

20. Taking cue from the above, we are satisfied that the minor's age was 8 years old at the time of commission of the offence and that the evidence relied on is credible and sufficiently proves the age of the minor.

21. On penetration, PW4 confirmed that the complainant was brought to the facility on the very day the offence occurred. He confirmed that on observing her private parts, she had bruises, bleeding and a swollen vagina. Her hymen was perforated. He formed the opinion that she had been defiled. Those injuries were consistent with the offence and there is sufficient evidence that this ingredient of the offence was proved to the required standard.

22. Lastly is the identity of the culprit. Both courts confirmed that the minor was defiled during the day and there was therefore, no case of mistaken identity. The culprit was also pointed out by the minor on the same day and shortly after the offence had been committed. PW1's evidence was subjected to cross examination. However, she remained credible and emphatic in her evidence.

23. Just like the two courts below we are satisfied that all the ingredients of the offence were established to the requisite standard. The proviso to section 124 of the *Evidence Act* provides that the evidence of a minor, as a single identifying witness, in sexual offences, can solely sustain a conviction, as long as the court is satisfied that the witness is telling the truth. From the evidence before us, we are in no doubt that in her testimony, the complainant was deliberate with the truth and the trial court was satisfied that she was telling the truth. We, like the two courts below, are satisfied that the appellant was the perpetrator of the offence.

24. Turning to the appellant's defence, we find that it was considered by both courts. It was rightly rejected for failing to cogently establish that he was innocent as he claimed. We also find that there were no contradictions, insufficiencies, conjectures or speculations in the prosecution's evidence that was of significant probative value. Accordingly, we find that all the grounds of appeal on conviction lack merit.

25. On the appellant's appeal against his sentence, we note the trial court sentenced him to life imprisonment by dint of section 8 (2) of the *Sexual Offences Act*. Those findings were upheld by the High Court. We note that section 8(2) of the *Sexual Offences Act* is couched in mandatory terms. We therefore, find that the sentence given was lawful and constitutional. This is also the holding of the Supreme Court in Republic vs. Joshua Gichuki Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and Republic vs. Manyeso [2025] KESC 16 (KLR). Until the Supreme Court rules differently or the law is changed, a life sentence is the only available sentence for the offence that the appellant was convicted for.

26. Accordingly, the appeal on conviction and sentence lacks merit and it is hereby dismissed in its entirety.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2025.

W. KARANJA

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JUDGE OF APPEAL ALI-ARONI

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR