



REPUBLIC OF KENYA



**Monica v Republic (Criminal Appeal E026 of 2025)  
[2025] KEHC 18876 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18876 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPEAL E026 OF 2025  
A MABEYA, J  
DECEMBER 19, 2025**

**BETWEEN**

**EMMANUEL AMOLLO MONICA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment, conviction & sentence of Hon.  
J. M. Wekesa SPM delivered on the 14/7/2022 in Nyando SPMC in  
Sexual Offences Case No. E010 of 2022, R. vs Emmanuel Amolo Monica)*

**JUDGMENT**

1. The appellant was charged with the offence of defilement contrary to section 8 (1) (4) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the charge were that, on 19/2/2022 at Katolo sub location Nyando sub county within Kisumu County he intentionally and unlawfully caused his penis to penetrate the vagina of E.A.O, a child aged 16 years.
3. The appellant also faced an alternative charge of committing an indecent act with a child contrary to section 11 (1) of the [Sexual Offences Act](#) No. 3 of 2006.
4. The appellant pleaded not guilty and the matter proceeded to trial. The prosecution called four (4) witnesses while the appellant gave unsworn testimony. In its judgment dated 14/7/2022, the trial court found the appellant guilty of the main charge, convicted and sentenced him to serve 15 years' imprisonment.
5. Dissatisfied by that decision, the appellant initially filed his petition of appeal dated 26/2/2025 raising six (6) grounds and subsequently filed an amended grounds of appeal raising three (3) grounds of appeal that can be summarized as follows: -



- a. That the trial court erred in law and in fact by not considering that the ingredients making the offence were not proven to the required standard considering that no medical evidence was tendered in respect that the appellant was sexually active.
  - b. That the trial court erred in both law and fact by failing to note and consider that the evidence tendered by the prosecution was full of contradictions, inconsistencies and doubtful evidence all pointing at a fabricated case.
  - c. That the learned trial court erred in law and fact in not considering the period the appellant spent in custody.
6. The appellant filed submissions in support of his appeal. It was submitted that he was not properly identified as the evidence of identification was uncorroborated. That the trial court failed to take into consideration the time the appellant had spent in custody and further that the trial court failed to consider the extraneous factors when making its judgment.
  7. This being the first appellate Court, its duty is well spelt out, namely, to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach its own independent conclusion and findings but at all times bearing in mind that it did not see the witnesses testify. (See *Okeno v Republic* [1972] EA 32.)
  8. Before the trial court, Pw1 E.A.O, the complainant testified that she was born on the 11/6/2005 and was 15 years old. That on 19/2/2022 at around 7.30pm, she left home to go and buy cooking oil and while on the way she met the appellant whom she used to see taking cows to drink water and used to work for one Joshua. That she recognised the appellant's voice as he used to buy water from her mother.
  9. That the appellant asked her to greet him but refused to let go of her hand and threatened to kill her with a panga if she screamed before leading her to some rental houses. Thereat, he tore her blouse, pushed her to the ground, removed her skirt and pant took out his penis and inserted it in her vagina.
  10. That after finishing having sex with her, the appellant left her and warned her not to tell anyone or else he would kill her. That on her way home, she met her mother whom she informed of the incident and she took her to the appellant's home where the appellant denied committing the offence and instead offered to take them to the individual who raped the complainant before running away. That her mother subsequently took her to hospital.
  11. Pw2 LAO, the complainant's mother corroborated the complainant's testimony. That she met the complainant on her way back home and noticed that she was holding her torn blouse at the side. She testified that the complainant was born on the 11/12/2005 and produced the birth certificate as PExh1.
  12. Pw3 Nelson Mandela, a clinical officer at Ahero sub county testified that he examined the complainant and filled the P3 and PRC form on the 22/2/2022 which he produced as PExh5 & 6, respectively. It was his testimony that he noticed that the complainant had bruising and mild swelling on her right knee. That her hymen was broken with a white discharge from the vagina and it was evident that she had been defiled. That the complainant had bruises on her private parts.
  13. Pw4 No. 72542 Corporal Kipkoech Rotich testified that the incident was reported at Kodete Police Post by Pw2 on 20/2/2022. That after carrying out investigations, on the 27/2/2022 he and his colleagues proceeded to the appellant's house where he was employed and arrested him.
  14. When placed on his defence, the appellant opted to give an unsworn testimony in which he denied committing the offence. That on the date of the incidence at 10pm, he heard someone calling him and found it was the complainant and her mother who was accompanied by a man who had incited her.



- That they accused him of having sex with the complainant which he denied and asked them to take both of them to hospital but on the way the lady started screaming alerting the villagers who rushed to the scene forcing him to flee. That after two weeks, he was arrested while at his home by the police in the company of the complainant's mother.
15. It is on the foregoing evidence that the trial court found the appellant guilty, convicted and sentenced him.
  16. Section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* establishes the offence of defilement as follows:
    - “8(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
    - 8(4) 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.”
  17. The specific elements of the offence of defilement arising from section 8(1) of the *Sexual Offences Act* which the prosecution must prove beyond reasonable doubt are: -
    - a. Age of the complainant;
    - b. Proof of penetration in accordance with Section 2(1) of the *Sexual Offences Act*;
    - c. Positive identification of the perpetrator.
  18. The age of the victim of defilement is an essential element because defilement is a sexual offence committed against a child who under the Children's Act is a person below the age of 18 years. In addition, the age of the child is an aggravating factor for purposes of determining the sentence to be imposed as per the penalty clauses in the *Sexual Offences Act*. The younger the child, the more severe the sentence.
  19. In this case, there was no dispute over the complainant's age. The complainant testified that she was born on the 11/6/2005 and was 15 years old. Pw2, her mother testified that the complainant was 15 years old but was born on the 11/12/2005 as was evidenced by the birth certificate produced as PExh1. The Complainant was thus roughly 16 years old at the time the offence being committed. That element was therefore proven.
  20. On penetration, section 2 of the Act defines penetration as follows: -
    - “the partial or complete insertion of the genital organs of a person into the genital organ of another person.”
  21. The complainant testified how the appellant defiled her under threat of death. That after defiling her, he threatened to kill her if she informed anyone of the incident.
  22. On this issue, it has been held in several occasions that a fact of rape or defilement can be proved by oral evidence and circumstantial evidence without necessary calling for medical evidence. This is in line with section 124 of the *Evidence Act* which states that corroboration is not necessary in sexual offences.
  23. In this case, the findings of the clinical officer who testified as Pw3 was that the complainant had been penetrated. That the hymen was broken and there was a white discharge coming from the complainant's vagina. This is prima facie evidence of penetration hence there can be no doubt



that penetration was occasioned on the complainant. This element was proved notwithstanding the appellant's contention that the Clinical Officer did not give his experience.

24. The final issue is whether the appellant was positively identified as the perpetrator. The appellant impugned his conviction and sentence on account that he was not properly identified.
25. From the record, it is clear that the appellant was well known to the complainant. She testified that the appellant used to buy water from her mother. That she knew him as she had seen him herding cows, a fact corroborated by Pw2. From the foregoing, it is clear that the appellant was not a stranger to the victim having lived with the appellant for a quite some time.
26. In his defence, the appellant gave unsworn testimony denying the charge. He did not address any of the issues raised by the evidence presented by the prosecution. He only seemed to refer to an unknown individual whom he claimed incited the complainant's mother.
27. The appellant contended that his conviction was grounded on evidence marred with contradiction and inconsistencies though he failed to point out the alleged contradictions and inconsistencies.
28. In *MTG v Republic (Criminal Appeal E067 of 2021) [2022] KEHC 189 (KLR) (15 March 2022)* (Judgment) cited with approval *Twehangane Alfred v Uganda, Crim. App. No 139 of 2001, [2003] UGCA, 6* as follows: -

“With regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution's case.”

29. Having subjected the evidence adduced to fresh scrutiny, the Court notes that the only contradiction is on the date of birth of the complainant as testified by the complainant and her mother. The complainant testified that she was born on 11/6/2005 while her mother, Pw2 testified that she was born in 11/12/2005. The latter was corroborated with the birth certificate produced as PExh1. In my view, the said contradiction was not material enough to warrant interference with the conclusions arrived at by the trial court.
30. I am thus satisfied that the appellant's conviction by the trial court was sound.
31. Finally, the appellant contended that the trial court failed to take into consideration the time spent in custody in computation of his sentence. Section 333(2) of the Criminal Procedure Code provides: -

“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.”

32. Having perused the records from the trial court, it is clear that the appellant was not afforded the benefit of section 333(2) of the Criminal Procedure Code as he spent his trial in custody.
33. Accordingly, the sentence of the applicant shall run from 27/2/2022 when he was first arrested and placed in custody. Save for that variation, the appellant's appeal is without merit and is hereby dismissed.

It is so decreed.

**DATED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**



**A. MABEYA, FCI Arb**

**JUDGE**

