



REPUBLIC OF KENYA



**Harrison v Republic (Criminal Appeal E127 of 2023)
[2026] KEHC 360 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E127 OF 2023
M THANDE, J
JANUARY 23, 2026**

BETWEEN

SAMUEL NGUMBAO HARRISON APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant herein, was convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* in Mariakani Sexual Offences Case No. E039 of 2022, and sentenced to 30 years imprisonment. The particulars of the offence are that on diverse dates between 1.8.22 and 17.8.22 in Samburu subcounty within Kwale County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of EJ (the Complainant), a child aged 13 years.
2. Being aggrieved by the decision of the trial Magistrate, the Appellant through his amended grounds of appeal seeks to overturn his conviction and sentence. His grounds are that the trial Magistrate erred by:
 1. Failing to see that the prosecution evidence was inconsistent with the police statements contrary to Article 50(2)(j) of *the Constitution*.
 2. Failing to consider that the evidence adduced was inconsistent with the particulars of the charge.
 3. Failing to see that the Complainant's evidence was obtained through coercion contrary to Article 50(4) of *the Constitution*.
 4. Failing to take into account his mitigation.
3. As a first appellate Court, I have subjected the evidence adduced before the trial Magistrate to a fresh analysis and evaluation while giving due allowance for the fact that unlike the trial court, I neither saw nor heard the witnesses. See *Okeno v. Republic* [1972] EA 32.



4. To sustain a conviction for the offense of defilement, 3 ingredients must be established by the prosecution. This was set out in *Charles Wamukoya Karani v Republic*, Criminal Appeal No. 72 of 2013 where the Court stated:

The critical ingredients forming the offence of defilement are; age of the complainant, proof of penetration and positive identification of the assailant.

5. This Court is required to determine whether in the court below, it was demonstrated that the Complainant was below 18 years of age. Secondly, that there was penetration of the Complainant's genitalia. Lastly, that the evidence identified the Appellant as the perpetrator.
6. The age of the Complainant was proved by means of her health card which indicates that she was born on 26.9.08. In August 2022, when the offence is alleged to have been committed, the Complainant was 13 years old.
7. As regards penetration, the Complainant testified that on 14.8.22, the Appellant held a crusade at their village. He thereafter set up a church which the Complainant began to attend. The Appellant differed with the community and was asked to leave by the chief. The Appellant had given his phone contacts to the Complainant and her friend Fatuma Kalume PW6. In June 2022, she left home and went to the Appellant's home with PW6. Following differences with his wife a few months later, the Appellant asked the Complainant and PW6 to accompany him to his other house in Mwavumbo and they saw the house. After prayers, they went back to the house. Later in the night, the Appellant asked them to join him in his bed due to mosquitoes and they obliged. Once there he caressed her breasts. The following day, he had sex with her; that he did a bad thing to her. She removed his trouser and inner wear and made love to her. She and PW6 had sex with the Appellant for 4 days. Later the Appellant told them he had been summoned to the DO's office. Later, the police came to the house and found them in the Appellant's room and took them to hospital where it was confirmed that she had slept with the Appellant.
8. In her testimony, PW6 Fatuma Kalume confirmed that she and the Complainant were at the Appellant's home and that he had invited them to share his bed. He did bad behavior to both of them. He inserted his organ into the Complainant's organ. In cross examination, PW6 stated that on one night, she, the Complainant and the Appellant had sex together on his bed.
9. PW7 Barrington Charo, a clinical officer at Mariakani Subcounty Hospital produced the PRC and P3 forms, laboratory request as well as the treatment notes of the Complainant who he examined on 18.8.22. He stated that his findings were that the Complainant had well-kept external genitalia with whitish discharge and loose vaginal sphincter muscles. She had pus cells between 10-20 but no spermatozoa. A pregnancy test was done and it was negative. He confirmed that there was penetration. He concluded from the Complainant's loose vaginal sphincter muscle that there was defilement but that the same occurred a long time ago and not within 24 hours. Accordingly, the ingredient of penetration is not in question.
10. On identification, the Complainant recounted how she joined the church the Appellant started after his crusade. He invited her and PW6 to his house and into his bed where he had sex with her. This was corroborated by PW6 in her testimony. PW1, Zawadi Charo stated that in June 2022, the Complainant who is her daughter went missing from home. She reported the matter to the chief who referred her to the children's officer. Following a tip off that the Complainant was with the Appellant, the children's officer called the Appellant who confirmed that he had 2 children and promised to bring them. The matter was reported to the police who went to the Appellant's house and got the Complainant and PW6. She further testified that the Complainant had told her that the Appellant had given her his



number and called her to his home where he had sex with her. She further stated that the Complainant had threatened to commit suicide if she was denied permission to go to the Appellant.

11. PW2 Garama Dzombo stated that PW1 had informed him that the Complainant was missing and he assisted her in looking for her. When they got to the Appellant's house in the company of police officers, they found the Complainant and PW6 as well as the Appellant, who were picked and taken to Mariakani Police Station. On his part, PW5 Harrison Katana Kombe, the chief of Mariakani location stated that the Appellant was given a plot by one Kahindi to set up a church. However, following community complaints that the Appellant was engaging children in prayers at night under suspicious circumstances, PW5 asked the Appellant to leave the area. Thereafter, the Complainant and PW6 went missing and the matter was reported to PW5 who referred the parents to the children's officer. The children were later found. PW4 Sergeant Hafswa Yakuti testified that the Complainant had been brought to the station from the Appellant's house. He later took her to hospital for examination and penetration was established. Following investigations, she charged the Appellant.
12. In his defence, the Appellant denied committing the offence and that the complainant and PW6 slept at his house. He denied calling the Complainant to his house. He stated that other pastors had issues with him and complained to the chief that he was taking away congregants from other churches. Further that PW1 went to a rival church and came to court to accuse him falsely. He further stated that the police officers at Mariakani beat up the girls so that they could lie against him.
13. The testimony of the Complainant, PW1, PW2 and PW6 all point to the Appellant as the perpetrator. He was known to all of them. The Complainant and PW6 stated that the Appellant had sexual intercourse with the Complainant. PW1 and PW2 further stated that the Complainant who had disappeared from home, was found in the Appellant's house. One would wonder what the Complainant who had been missing was doing in the Appellant's house and in his room. The denial by the Appellant in his defence did not shake the prosecution evidence. Further, his claim that the Complainant and PW6 were beaten by the police officers to testify falsely against him is not supported by evidence. His ground that the evidence was obtained through coercion is thus rejected.
14. The Appellant contends that the evidence was inconsistent with the police statement. In particular, he takes issue with the fact that PW1 stated that she did not in her statement indicate that the Complainant had told her she had sex with the Appellant. While this is acknowledged, it is insignificant. In any event, even if she had stated in her statement that her daughter had told her that the Appellant had sex with her, it would have been hearsay. I accordingly find that nothing turns on this ground.
15. The Appellant further contends that PW2 acknowledged that in his statement, he did not state that the Complainant was found in the same room with the Appellant. While this may be so, it does not negate the fact that the Complainant was found in the Appellant's house after disappearing from home. It does not also shake the evidence of the Complainant and PW6 that the Appellant had sex with the Complainant.
16. The Appellant's contention that the prosecution evidence was inconsistent with the particulars of the charge. A clear examination of the evidence on record shows that the evidence adduced was consistent with the particulars of the charge of defilement.
17. Further none of the witnesses' testimony contradicted the other. Even those who reported what was told to them did not give a different account from that of the Complainant and PW6 which is direct. Any difference in dates, time and rooms are in my view inconsequential. Accordingly, I reject the



Appellant's contention in this regard. In so doing, I find guidance in the decision in Willis Ochieng Odero vs. Republic [2006] eKLR, where the Court of Appeal held:

As for the contradictions in the prosecution evidence it may be true that such contradictions, particularly with regard to the date indicated on the P3 form as the date of the offence, is different. But that per se is not a ground for quashing the conviction in view of the provisions of section 382 of the Criminal Procedure Code.

18. The Appellant contends that the trial Magistrate did not consider his mitigation. The record however shows that the trial Magistrate did consider the Appellant's mitigation and weighed the same against the gravity of the offence. She found that the Appellant was a sexual predator targeting young girls who lured them under the pretext that he was a man of God. The trial Magistrate further found that the Appellant was a danger to society and proceeded to impose sentence. The claim by the Appellant that his mitigation was not considered is therefore unfounded and the same is rejected.
19. In the end, I find that the prosecution proved its case beyond reasonable doubt. All 3 ingredients of the offence were proved. Accordingly, the Appellant was properly convicted and sentenced. The Appeal is dismissed and both the conviction and sentence are upheld.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 23RD DAY OF JANUARY 2026

M. THANDE

JUDGE

