

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL APPEAL NO.E059 OF 2022

JOHN CHEGE MBUGUAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal against CONVICTION ONLY, for the offence of Defilement contrary to Section 8(1)(2) of the Sexual Offences Act No.3 of the Laws of Kenya, Judgment delivered on 17th August, 2021 at SPM's Court in Githunguri)

JUDGMENT

1. The matter is for mention for the Appellant to confirm filing and service of written submission.
2. However, the Appellant is not in attendance but a perusal of the court record reveals a Letter dated 4th December, 2025 from **Evans Ndungu (S.P)** of Kiambu Prison addressed to the Deputy Registrar, wherein he has forwarded an undated Letter addressed to the Registrar by **John Chege Mbugua**, the Appellant herein, wherein he has expressed his resolve to have this appeal withdrawn on the grounds that he has considered the jurisprudential imperatives of finality of litigation, conservation of judicial resources, absence of substantial appellate substratum, personal reconciliation with the trial court's verdict, avoidance of dilatory proceedings, respect of the

findings of the subordinate court and the overarching interest of justice.

3. It will be noted that the Appellant herein was arrested and charged with the offence of **Defilement contrary to Section 8(1)(2) of the Sexual Offences Act No.3 of the Laws of Kenya**, in Count 1.

The facts of the offence were that:-

“On 18th day of September, 2020 at around 1800 hours at Karia Village in Githunguri Sub-county within Kiambu County, the Appellant intentionally and unlawfully caused his genital organs namely, penis to penetrate into the vagina of A. W. N., a girl child aged 10 years”.

4. The Appellant was also charged with an alternative charge of **Committing an Indecent Act with a child contrary to Section 11(1) of the Sexual Offences Act and a second Count of Deliberate Transmission of HIV contrary to Section 26(1)(b) of the Sexual Offences Act, No.3 of 2006.**

The particulars of the said (2) Counts were that:-

“On 18th September, 2020, at around 1800 hours at Kiria Village in Githunguri Sub-county within Kiambu County while having actual knowledge that he was infected with HIV, the Appellant intentionally and wilfully inserted his penis in the vagina of A.W.N which he knew to likely lead to A.W.N being infected with HIV.”

5. The Appellant pleaded **“Not Guilty”** to the said offences and he was tried

from 28th October, 2020 until 17th July, 2021 when the Appellant was placed on his defence and he opted to remain silent. The trial Court then proceeded to deliver a Judgment on 17th August, 2021 wherein the Appellant was found guilty of the offence of Defilement. The Appellant was acquitted under **Section 215 of Criminal Procedure Code** for the offence of **Deliberate Transmission of HIV contrary to Section 26(1)(b) of the Sexual Offences Act** on the ground of insufficient evidence.

6. Dissatisfied with the said conviction and sentence the appellant filed the present appeal vide a **Memorandum of Appeal** dated 16th September, 2022, citing six (6) Grounds of Appeal.
7. It is worth noting that both Records of Appeal and Original Proceedings were availed in court and on 21st November, 2024, the appeal was admitted for hearing and directions on its disposal issued. On 3rd December, 2025 both sides confirmed having filed and served their respective submissions.
8. However, counsel for the Respondent went on to orally submit that the Appellant had been charged under **Section 8 of the Sexual Offences Act** which provides for a mandatory life sentence but he had been sentenced to serve a fifteen (15) years sentence which is an illegal sentence. He then

urged that the sentence meted against the Appellant be enhanced and invited the Appellant to respond to the said issue. In response, the Appellant has filed a **Notice of Withdrawal of this Appeal**.

9. In determining the merits of the **Notice of Withdrawal**, I have taken into consideration the reasons advanced by the Applicant as being the grounds upon which his request for the appeal to be withdrawn.

10. This Court finds the reasons justified and tangible. In conclusion, pursuant to the undated **Notice of Withdrawal** application filed in this Court on 19th December, 2025, this Appeal be and is hereby marked as withdrawn.

11. Consequently, this Appeal be and is hereby marked as withdrawn with no orders as to costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 28TH DAY OF JANUARY, 2026.

D. O. CHEPKWONY
JUDGE

In the presence of:-
Appellant in person – Absent

M/S Murrui counsel for the Respondent
Court Assistant – Martin/Sakina

ORIGINAL