



**Mwirambua v Republic (Criminal Appeal E060 of 2024)
[2026] KEHC 503 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E060 OF 2024
SM GITHINJI, J
JANUARY 26, 2026**

BETWEEN

SILAS BARIU MWIRAMBUA APPLICANT

AND

THE REPUBLIC RESPONDENT

JUDGMENT

1. Silas Bariu Mwirambua was charged in the lower court with a main count of defilement contrary to section 8(i)(4) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of this offence are that on 7th March, 2023 at [Particulars Withheld], Amurathi Sub-location of Kabachi Location in Mutuati Sub-county within Meru County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of L.M a child aged 12 years.
3. In the alternative he faced an offence of committing an indecent act with a child, contrary to Section 11 (1) of the *sexual offences Act* No. 3 of 2006.
4. The particulars of this offence being that on the 7th day of March, 2023 at [Particulars Withheld], Amurathi Sub-location of Kabachi Location in Mutuati Sub-county within Meru County, the appellant intentionally touched the vagina of L.M a child aged 12 years.
5. The prosecution case is that the victim in this case who offered evidence as Pw-1, was living with her mother (Pw-2) at Kabachi. The mother is a farmer at the place. The victim as at the date of the alleged offence, which was on 7/3/2023, aged 12 years and was schooling at Ambaru Primary School, in grade six (6).
6. The appellant was their immediate neighbour and was known to both the victim and her mother, by the name Bariu.



7. On 7/3/2023 at about 7.00pm the victim went to the farm to pick the goats and drive them home. The said goats had been tethered in the farm. As she was doing so, the appellant accosted her from behind. He held her and dragged her to his neighbouring farm at a place where he had lit fire. He undressed her before he undressed. He then has sexual intercourse with her to which the victim referred to as having done bad manners to her. She did not scream as it was at night and she was scared.
8. When they were through she was set free and proceeded home. At home she did not report to her mother (Pw-2). She was not in pain. However, on the 3rd day, on 10/3/2023 she felt pain. She informed her mother of the pain without disclosing the cause. She was taken to Mutuati Sub-County Hospital. She was seen by Pw-3, a Clinical Officer at the said hospital. She complained of pain in her private parts and discharge. She did not prefer the presence of her mother during the examination and Pw-3 told her to briefly step outside.
9. The victim stated she had sexual intercourse with an older man on 7/3/2023 at 7.00pm. She further disclosed that the appellant had sex with her on two other previous occasions, and every time they had sex he could give her money. In two previous occasions he had given her 20 shillings and the last one 30 shillings.
10. The clinical officer examined her and noted that her external genitalia was swollen and had a discharge oozing from her vagina. Laboratory tests revealed on HVS- presence of STI. She was treated for the same.
11. The hymen was not freshly broken, but it was inconsistent with her age. Having an STI was also unusual for a child of her age. Given the findings, the witness was of the opinion that the girl had been defiled. The witness produced the treatment notes (card), P-3 form and PRC form as exhibits.
12. Pw-4 investigated the case. The culprit was arrested by members of the public and taken to Mutuati Police Station where he was re-arrested and charged with the offences carried in the charge sheet.
13. The appellant in his defense stated the accusation was based on hearsay. The accuser intended to take his land which borders theirs.
14. The trial court evaluated the evidence and found the appellant guilty of the offence in the main count. He was convicted of it and sentenced to serve 15 years' imprisonment.
15. The appellant dissatisfied with the said conviction and sentence, preferred an appeal to this court on the grounds that;
 1. He was not examined in order to establish the truth.
 2. Prosecution case was not proved beyond reasonable doubt.
 3. His defense was not considered.
 4. Some crucial witnesses were not availed by the prosecution, especially those who arrested him.
16. The appeal was canvassed by way of written submissions and both parties filed their respective submissions.
17. As the first appellate court, I have re-evaluated the entire evidence against the preferred charges, the judgment of the lower court, sentence meted, grounds of the appeal and the submissions filed.
18. To prove the offence of defilement under section 8 (1) of the *sexual offences Act* No. 3 of 2006, the prosecution must prove the following three core elements beyond reasonable doubt:



1. Age of the victim, who must be a child below the age of 18 years.
 2. Proof of penetration of genital organs by genital organs. Here the slightest penetration would suffice for the offence.
 3. Positive identification of the assailant as the real culprit.
19. The age of the victim can be proved by Birth certificates, other reliable documents, age assessment reports, clinic cards, reliable oral evidence and even apparent age as may be observed and noted in the proceedings by the trial court.
20. In this case the complainant said during *voire dire* and her evidence in chief that she was at the time of the offence aged 12 years. She did not disclose the date when she was born.
21. Her mother did not also disclose the age or the date when she was born. The other evidence available is filled medical records which were produced in court as exhibits. These are P-3 form, General outpatient card, laboratory Request form, PRC- form and immunization card. The immunization card shows the first immunization was on 6th May 2011. PRC form indicates the date of birth as 20th March 2011. The rest of documents states that she was 12 years old when they were filled. It would be safer given the circumstances to go with the date of first immunization which is 6th May 2011. Given that the offence was allegedly committed on 7th March 2023; by simple calculations, at the time of the alleged offence she was 12 years old as stated by her and shown in the rest of her documents. There is therefore no doubt in the case that the victim was 12 years old as at the time of the alleged offence.
22. On penetration, the victim stated that the appellant undressed her before he himself undressed. He then did to her bad manners. Though she did not exactly expound on what bad manners was all about, the fact it was done by a naked male and a female and in secret. When considered together with the evidence of Pw-3, the Clinical officer, makes it vivid as she told him that she had sexual intercourse with an older man. Upon examination he noted infection (STI) and rupture of hymen which were unusual to a child of her age. They made him conclude that she had been defiled.
23. The evidence when weighed together leads to conclusion that the victim's genital organs were penetrated by genital organs. In the case of the Republic –Vs- Peter Karanja and Another [2015] eKLR, the court held that, of which is consistent with the foregoing finding; the complainant's testimony coupled with medical findings was sufficient to infer penetration.
24. On identification of the culprit, the appellant was well known to the victim and her mother as an immediate neighbor. He does not deny that and conceded to it in his defense. The victim could not have made a mistake of him. It is also noticeable that the incident took part in his farm which points to him as the real culprit. He was properly recognized as the culprit.
25. His defense which is of mere denial does not cast a doubt on the truth of the prosecution case. It was rightly dismissed.
26. His conviction for the offence on the main court is sound, and is hereby upheld.
27. On sentence, the appellant defiled a child aged 12 years. Section 9(2)(3) of the *sexual offences Act*, under which the appellant was charged and convicted, provides for a minimum of 20 years imprisonment.
28. In this case the appellant was sentenced to serve 15 years imprisonment. Under section 354 (3) (ii) of the criminal procedure code (Cap 75), the High court on appeal may: Increase or reduce the sentence or Alter it to a lawful sentence



29. So where the trial court gives a sentence below the mandatory minimum, the appellate court is empowered to enhance it to conform to the law. In *Ogolla s/o Owuor -Vs- R* (1954) EACA 270, it was held that an appellate court will interfere with sentence where it's illegal, or where the trial court acted on wrong principles.

30. The sentence of 15 years meted is illegal and is substituted with the legal one of 20 years' imprisonment.

JUDGMENT READ AND SIGNED IN THE OPEN COURT THIS 26TH JANUARY, 2026.

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HON. JUSTICE STEPHEN GITHINJI

In the presence of: -

Appellant - At Meru G K Prison

Ms. Adhi for the state

