Musumba v Republic (Criminal Appeal E049 of 2024)
[2026] KEHC 981 (KLR) (2 February 2026) (Judgment)

Neutral citation: [2026] KEHC 981 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CRIMINAL APPEAL E049 OF 2024

WM MUSYOKA, J

FEBRUARY 2, 2026

BETWEEN

MICHAEL OGORA MUSUMBA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from conviction and sentence, by Hon. TA Madowo, Senior Resident Magistrate, SRM, in Busia MCSOA No. E071 of 2022)

JUDGMENT

1. The appellant was convicted of defilement of an 11-year-old child, on 22nd June 2022, at Butula, Busia County, contrary to section 8(1)(2) of the *Sexual Offences Act*, Cap 63A, Laws of Kenya. A trial was conducted. 6 witnesses testified.

2. PW1, was the complainant, a class 4 pupil. She testified that the appellant used to wait for her on the road, as she went to and from school. He would hide in the bushes, emerge when she approached, slap her, carry her into the bushes, remove her underwear and his, and defile her. She said that he did that several times, on diverse dates, which she could not remember. She reported to her parents, and the matter was escalated to the authorities. PW2 was her father. He got information on the defilement, and had the appellant arrested. PW3 was the mother of PW1, to whom PW1 had disclosed what was happening to her, in the hands of the appellant. PW4 was the clinician, who attended to PW1. He found a vaginal discharge and itchiness. The hymen was broken. There was presence of yeast and epithelial cells. PW1 was treated for UTI and STI, and was placed on medication. He concluded that there was defilement. PW5 was a neighbour. She saw the appellant on 22nd June 2022, emerge from the bushes, in the company of PW1, and she informed PW3. PW6 investigated the matter. At the end of the trial, the appellant chose to remain silent, in defence.

3. Upon conviction, and being sentenced to 50 years in jail, he appealed. His case is grounded on the case not being established beyond reasonable doubt; the age of PW1 not being proved; penetration not being proved; failure to analyse evidence; disregard of discrepancies; and the illegality of sentence.

4. Although the appellant claimed to have filed written submissions, I have not come across them.

5. This is a first appeal. I am required to re-evaluate the trial record, and draw my own conclusions. I have done so. I have reviewed the testimonies and the exhibits placed on record.

6. The offence charged is defilement. It has 3 elements: proof of the age of the complainant, proof of penetration, and the identification of the perpetrator of the penetration.

7. The charge put the age of PW1 at 11 years. When she testified, on 12th October 2022, PW1 stated that she was 11 years old, having been born on 17th July 2010. She had a certificate of birth, which was marked, and later produced by PW6. I have seen a copy of that certificate. The authenticity of the certificate was not impeached at trial, and the appellant did not object to its production. PW1 was 11 years, 11 months, and 5 days old on 22nd June 2022, when the offence was committed. She was still, therefore, within the age bracket contemplated in section 8(2) of the *Sexual Offences Act*.

8. On penetration, PW1 testified that the appellant had defiled her several times, but the charge was founded on a specific date, 22nd June 2022, when PW5 saw her with the appellant, emerging from bushes. PW1 testified on how the appellant would way lay her on her way to and from school, and defile her. She was fairly graphic about what he used to do to her, which left no doubt that penetration happened. The forensics, from PW4, the clinician, confirmed the penetration. There was vaginal discharge, and itchiness, on her genitals. High vaginal swabs reflected that the hymen was broken, there were yeast and epithelial cells, and she had to be treated and medicated for UTI and STI. All that for an 11-year-old. The evidence on penetration was overwhelming.

9. On the identification of the appellant, as perpetrator, PW1 knew him. He was a local in the area. She even knew him by name, Ogora. The defilement had happened several times. She could not possibly be mistaken about the identity of the appellant. Then there was the testimony of PW5. She saw the appellant emerging from bushes, with PW1. PW5 knew the appellant, for many years. An adult male, being seen emerging from the bushes, with a minor female, maybe suspicious, but it is not, of itself, evidence of defilement. However, when taken together with the results of the forensics, done shortly thereafter, on the child, and the testimony of the child, there could be no doubt that the appellant had been properly and adequately identified as the perpetrator.

10. He argues that the case was not proved beyond reasonable doubt. Well, that is not what I see from the record before me, going by my analysis above. He says the age of PW1 was not proved. A certificate of birth was presented. It was not contested, at trial. He says penetration was not proved. The testimony of PW1 and PW4 damning. The forensics were even more damning. His identification by PW1 and PW5 was equally damning.

11. On the evidence not being analysed, I have gone through the judgment. It is 6 pages long. The testimonies of the witnesses are recited. Paragraphs 13 and 14, of the judgment, analyse the evidence. The fact that the appellant did not confront 4 of the witnesses at cross examination was noted. How the appellant was placed at the scene, by PW1 and PW5, was captured. How PW1 testified to being defiled over a period of time, and how she mentioned the appellant as the perpetrator at treatment and in court, were also noted. The medical records were analysed. It was noted that hymen was broken, and there was a sexually transmitted disease, which was abnormal of a child of 11. It cannot be said that the trial court did not analyse the evidence.

12. He says there were discrepancies in the evidence. I have not come across any. He submits that the sentence is illegal. I see no illegality. The sentence prescribed, under section 8(2), is life imprisonment. He was given a definite sentence of 50 years. I see no illegality there.

13. The long and short of it is that the appeal lacks merit. I hereby dismiss it. The conviction is hereby affirmed, and the sentence confirmed.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 2ND DAY OF FEBRUARY, 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Michael Ogora Musumba, the appellant, in person.

Advocates;

Mr. Onanda, instructed by the Director of Public Prosecutions, for the state.