



**Kahindi v Republic (Criminal Appeal E003 of 2024)  
[2026] KEHC 1929 (KLR) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1929 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL APPEAL E003 OF 2024  
M THANDE, J  
FEBRUARY 13, 2026**

**BETWEEN**

**SHABAN CHANGAWA KAHINDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant, was charged in Kaloleni Sexual Offences Case No. E020 of 2023 and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* (SOA). The particulars of the offence are that on 21.6.23 at [Particulars withheld] village, Kithengwani sublocation, Mwanamwinga location, Kaloleni subcounty within Kilifi County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of HM (the Complainant), a child aged 5 years. The Appellant was sentenced to 30 years imprisonment.
2. Being aggrieved the Appellant filed his appeal challenging his conviction and sentence. The summarized grounds of appeal are that the trial Magistrate erred by:
  1. convicting him in the absence of any cogent and tangible evidence.
  2. relying on the uncorroborated testimony of a single witness.
  3. relying on contradictory, inconsistent and unsubstantiated evidence.
  4. failing to take into account the period spent in remand pending trial.
  5. failing to consider his unshaken defence.
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. I have also considered the Appellant's submissions dated 8.12.25 and those of the Respondent dated 24.4.25. It is noted that the Appellant's submissions as filed by his advocates are at variance with the grounds of appeal and do not fully address the grounds. The submissions simply contend that the prosecution did not prove its case to the required standard and that the Appellant's evidence was not considered by the trial court.
5. To sustain a conviction for the offense of defilement, 3 ingredients must be established by the prosecution. This is 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.

6. 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.
7. The record contains the birth notification of the Complainant produced by PW4 Mwangolo Chigulu, Senior Clinical Officer at Mariakani Subcounty Hospital, which indicates that she was born on 17.4.16. Although the child was 7 years old and not 5 years old as indicated in the charge sheet, this was not challenged by the Appellant. In any event whether the Complainant was 5 or 7 years old, the charge is the same. Section 8(2) of the SOA under which the Appellant was charged provides that a person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life. The test of age was thus established.
8. As regards penetration, the Complainant testified that on the material day she and M were playing at home when the Appellant pulled her into a maize plantation He told her to relax and threatened to kill her if she screamed. He removed her panty and his shorts and did bad manners to her by inserting his organ for short call into hers and also into her anus. When he was done, he ran away and left her there. She put on her panty and went home and slept. She told her parents and grandmother what the Appellant had done to her and they took her to hospital.
9. On the term "bad manners", I take guidance from the words in the case of *Muganga Chilejo Saha v Republic* [2017] eKLR where the Court of Appeal had this to say about the term "tabia mbaya" or "bad manners" in the Kenyan context:

Naturally children who are victims of sexual abuse are likely to be devastated by the experience and given their innocence, they may feel shy, embarrassed and ashamed to relate that experience before people and more so in a court room. If the trend in the decided cases is anything to go by, courts in this country have generally accepted the use of euphemisms like, "alinifanyia tabia mbaya", (*IE V R, Kapenguria H.C Cr. Case No. 11 of 2016*), "he pricked me with a thorn from the front part of this body.", (*Samuel Mwangi Kinyati v R, Nanyuki HC.CR.A. NO. 48 of 2015*), "he used his thing for peeing", (*David Otieno Alex v R, Homa Bay H.C Cr Ap. No. 44 of 2015*), "he inserted his "dudu" into my "mapaja", (*Joses Kaburu v R, Meru H.C Cr. Case No. 196 of 2016*), "he used his munyunyu", (*Thomas Alugha Ndegwa, Nbi H.C. Cr. Appeal No. 116 of 2011*), as apt description of acts of defilement.

10. In the case herein, the Complainant went ahead and described the bad manners done to her by the Appellant, namely inserting his organ for short call into hers and also into her anus.



11. PW1, FMM, the mother of the Complainant testified that when she returned home from the farm, she found the Complainant in bed who told her she was unwell. The following morning as she was bathing the Complainant, she noticed she was bleeding and had a whitish discharge in her vagina and was passing stool uncontrollably. On inquiry, the Complainant told her what the Appellant had done to her. PW1 told the Complainant's grandmother and father. They then reported the matter at Gotani Police Station and were referred to Mariakani Hospital. Upon examination, it was confirmed that there was penetration of the Complainant's vagina and anus.
12. PW4 stated that he examined the Complainant on 23.6.23. She was calm but in pain. She had swollen and bruised labia and a vaginal tear at 6 o'clock. Her hymen was freshly broken but not bleeding and she had a whitish clear discharge. Her anal orifice was bruised and her sphincter muscles were loose. He concluded that there was both vaginal and anal penetration. He produced the P3 and PRC forms, treatment notes, lab request and report as well as the GBV request form which he had filled.
13. From the testimony of the Complainant and PW1 and the medical evidence, I am satisfied that penetration was established.
14. As regards identification of the Appellant as the perpetrator, the Complainant stated he is known to her. She identified him by name, pointing at him in court. Indeed, in cross examination, she told the Appellant that she knows him very well. She then repeated what he did to her. PW1's testimony is that the Complainant told her that it was the Appellant who had defiled her. Further that he is a neighbor and relative. In his testimony, the Appellant stated that the Complainant's family is their neighbor. This was also confirmed by his father DW2. The incident occurred during the day when the children were playing. I accordingly find that the Appellant was positively identified.
15. I now turn to the ground that the trial Magistrate erred by convicting the Appellant on the uncorroborated testimony of a single witness. From the record, the only direct evidence that the Appellant was the assailant is that of the Complainant. None of the other witnesses witnessed the offence. The proviso to Section 124 of the *Evidence Act* allows the court to receive evidence of an alleged victim of a sexual offence, notwithstanding that it is the only available evidence and to record the reasons for believing the evidence. Section 124 provides as follows:

Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:

Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.
16. Where the testimony of a victim of sexual offence is found to be truthful, the same need not be corroborated. For a court to convict an accused person of a sexual offence only on the basis of the uncorroborated evidence of the victim, such court must be satisfied that the victim is telling the truth and must record the reasons for so believing.



17. In the case of *Mohamed v. Republic* (2008) 1 KLR (G&F) 1175 the Court of Appeal stated:

The message, in our view is clear; the Courts shall no longer be hamstrung by requirements of corroboration where the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful.

18. In her judgment, the trial Magistrate stated that the Complainant positively identified the Appellant as the perpetrator and that the incident took place in broad daylight. She thus found that the prosecution proved its case to the required standard. From the evidence on record, I find that the Complainant's testimony was remarkably clear and consistent. In spite of her tender age, her testimony was clear and was not shaken in cross examination.

19. The Appellant further faulted the trial Magistrate for failing to take into account the period spent in custody pending trial.

20. Section 333(2) of the Criminal Procedure Code provides as follows:

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.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

21. The proviso to Section 333(2) requires the court while sentencing, to take into account the period an accused person has spent in custody pending trial.

22. In the impugned judgment, the trial Magistrate stated as follows prior to sentencing the Appellant:

I have considered the mitigation of the accused person and the fact that he is a first offender. He has been in custody for five months which I take note and consideration.

23. It is clear that contrary to the Appellant's contention, the period he spent in remand pending trial was taken into account by the trial court. This ground thus fails.

24. The last ground is that the trial Magistrate erred in failing to consider the Appellant's alibi defence. I have looked at the judgment. The trial Magistrate did consider the Appellant's defence and noted that he had stated that he was not home on the material date but was with his uncle Ramadhan doing construction work. His father DW2 however stated that they had gone to Mbolu's house on 7.6.23 to demolish an old house and that on 21.6.23, the Appellant was at home as they were bereaved. The trial Magistrate found the defence evidence to be contradictory and not believable. Her finding was that the Appellant failed to exonerate himself. The contradictory defence evidence did not shake the prosecution evidence. In the premises, I concur with the trial Magistrate and find no reason to interfere with her finding.

25. After considering the evidence on record, I find that the prosecution proved its case beyond reasonable doubt. I see no contradictions and inconsistencies in the prosecution evidence. I find that the Appeal lacks merit and the same is accordingly dismissed.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**M. THANDE**



**JUDGE**

