



REPUBLIC OF KENYA



KENYA LAW
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**Kaloi v Republic (Criminal Appeal E014 of 2022)
[2026] KEHC 1292 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL APPEAL E014 OF 2022
CM KARIUKI, J
FEBRUARY 6, 2026**

BETWEEN

STEPHEN SAWOYO KALOI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal against conviction and sentence by Hon. R. M. Oanda in Sexual Offence Case No. E008 of 2021 at the Senior Principal Magistrate's Court at Kilgoris)

JUDGMENT

1. The Appellant was convicted of the offence of Defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* No. 3 of 2006.
2. Particulars being that on 17/11/2020 within Kilgoris Land, Trans Mara West Sub County, Narok County, intentionally and unlawfully caused his penis to penetrate the vagina of EB, a girl aged 15 years, without her consent.
3. He also faced an alternative count of Indecent Act with a child; however, after pleading not guilty, he was convicted of the main count and was sentenced to 20 years' imprisonment.
4. Being aggrieved by the said verdict, the Appellant lodged an instant appeal and set out 9 grounds which can be summarized as whether the ingredients of the offence were proved beyond a reasonable doubt. And whether the sentence was illegal or excessive, and whether the period in custody ought to have been considered in sentencing.
5. The court gave directions for the appeal to be canvassed by way of submissions, which were thereafter filed by the parties.



Appellant Submissions:

6. The Appellant did not lodge any submissions on record. This absence of submissions did not hinder the court's assessment as it adhered to the process of procedural fairness. The court proceeded with its evaluation based on the available evidence and the Respondent's submissions, ensuring an unbiased examination of the appeal.

Respondents Submissions:

7. The Appellant was charged with the offense of Defilement contrary to Section 8(1) as read together with Section 8(4) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the 17th day of November 2020, within Transmara West Sub-County within Narok County, intentionally and unlawfully caused his penis to penetrate the vagina of EB, a girl aged 15 years.
8. He also faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act* no 3 of 2006. The particulars were that on the 17th day of November 2020, at Kilgoris town within Transmara West Sub-County within Narok County, intentionally and unlawfully touched the vagina of EB, a girl aged 15 years, without her consent.
9. To sustain a conviction in a defilement charge, as was held in *Charles Wamukoya Karani v Republic*, quoted with approval by Aburili J. in *Simon Oduor Oloo versus Republic* (2022) eKLR, the prosecution has to establish the existence of the three ingredients constituting the offence. The court stated, "the critical ingredients forming the offense of defilement are: age of the complainant, proof of penetration, and positive identification of the assailant." (*Kasingihi v Republic* (Criminal Appeal E033 of 2023) [2025] KEHC 6130 (KLR) (16 May 2025) (Judgment), 2025

Age:

10. The complainant, PW1, testified that she was 14 years old, born on 14th September 2007, and a class 7 pupil at [Particulars Withheld] Primary School. (See page 2, paragraph 4 of the typed proceedings.) Her age assessment form was produced by the Clinical Officer, PW3, as prosecution exhibit 4. (See page 8, paragraph 3 of the typed proceedings.) It confirms that her approximate age was 15 years.
11. In *Francis Omuroni versus Uganda*, Court of Appeal criminal appeal No. 2 of 2000, the court rendered itself as follows: "In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only one who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence, age may also be proved by birth certificate, the victim's parents or guardian, and by observation and common sense."
12. In the present case, the minor/complainant's testimony and the age assessment form established the minor's age.
13. Penetration: The complainant testified that her mother sent her to purchase cooking oil. On her way back, she met the Appellant, who asked her to go with him into a maize plantation. When she declined, the Appellant pulled her into the maize plantation, fell her to the ground, removed his trousers and the complainant's inner wear and had sex with her. I-le then arose and left.
14. PW2, the complainant's mother, met the complainant while she was leaving the maize plantation. The complainant disclosed to her that the Appellant had defiled her. (The complainant.) Consequently, PW2 took the complainant to the police station and later to the hospital, where the complainant was examined and treated. (See page 4, paragraph 4-6 of the typed proceedings.)



15. The Clinical Officer, PW3, testified and stated that the minor had the following injuries:
 - Both labia were swollen.
 - The clitoris was hyperemic.
 - The hymen was broken, and there was discharge.
 - Pus cells were seen on lab examination.
16. The Clinical Officer concluded that the minor had been defiled. She produced the medical examination report (P3 form) as exhibit 1, treatment notes dated 18th November 2020 as exhibit 2, and the PRC form as exhibit 3. (See page 8, paragraphs 1-3).
17. Penetration is proved by the victim's evidence, corroborated by medical evidence. (Court, 2025) (See *Onzare versus Republic* (criminal appeal 15 of 2023) (2024) KEI-IC 494 (KLR) (25 January 2024) (judgment), para 23.)
18. The findings by the clinical officer corroborate the complainant's testimony that there indeed was penetration.
19. The complainant testified that he knew the Appellant before as a distant neighbor. (See page 3, paragraph 2 of the typed proceedings) PW2, the complainant's mother, clarified further that she has been neighbors with the appellant at Mosochi for more than 10 years. Further, she first knew the Appellant when he was a young child, and at that time, the complainant was still a breastfeeding toddler. (See page 4, paragraph 7 of the typed proceedings.) PW2 's testimony buttresses the complainant's assertion that she knew the appellant well, having been neighbors since the time that she was still a breastfeeding toddler up to the time of the defilement when she was 14 years of age.
20. Madan J. A in *Anjononi and others vs the Republic* (1980) KLR, quoted in *Daniel Muthomi Marig u & 4 others vs Republic* (2021) eKLR, held: "this however was a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other."
21. As such, with the sufficient light given that the offense occurred at around 6 p.m. and the close proximity, she would unerringly recognize the appellant during the commission of the offense.

Sentencing:

22. In arriving at the sentence, the appellant's mitigation was considered. The learned trial magistrate also considered that it was his first offense, but also a serious one, committed in a very violent and inhuman manner. The court concluded that a 20 -year sentence was ideal under the circumstances. It is noteworthy that the maximum sentence for the offense of defilement is life imprisonment. It's clear that the appellant's sentence falls within the legal limit. The sentence of 20 years also provides the Appellant with an opportunity to reintegrate into society after its completion. (*Nyangweso v Republic* (Criminal Appeal E86 of 2022) [2023] KEHC 22484 (KLR) (22 September 2023), n.d.)
23. The Respondent however concede that the time of service of the sentence may be calculated from 16th March 2021, when the Appellant was first arraigned in court in line with Section 333 (2) of the Criminal Procedure Code CAP 75 Laws of Kenya, to factor in the time that the appellant spent in custody during the subordinate court case's trial, having not been released on bond.



Issues Analysis and Determination

24. Upon reviewing the trial court record, proceedings, and submissions, the core issues to be addressed are: 1. Were the elements of the offence charged proved to the required standard? and was the sentence imposed excessive?
25. Duty of the first appellate court In the Kenyan criminal justice system, the High Court serves as the first appellate court for appeals from subordinate courts under *the Constitution* and Criminal Procedure Code. The primary duties of the first appellate court in criminal appeals are as follows:

1. Re-evaluation of Evidence

26. The first appellate court is duty-bound to reconsider the evidence afresh, not merely to review whether the trial court's findings are supported. It must marshal all evidence on record, weigh conflicting testimonies, and independently assess both the credibility and reliability of witnesses. It draws its own conclusions regarding convictions or acquittals, taking care to allow for the trial court's advantage of seeing and hearing witnesses. (*Kamau v Republic (Criminal Appeal E035 of 2024) [2025] KEHC 6396 (KLR) (16 May 2025), 2025*) See the cases of *Francis Kimani Karanja v Republic (2016) KEHC 458* and *R v Kiilu and another (1995) 1 KLR 174*.

2. Assessment of Legal and Factual Questions The appellate court analyzes both matters of law and fact for first appeals, which are otherwise confined to points of law.

27. It examines whether the trial court misinterpreted or ignored material evidence or legal principles and can reverse decisions if such errors significantly affect the outcome. In criminal appeals such as *Okenov Republic EA32*, the court emphasized that it is not sufficient to merely find evidence supporting the trial court's findings. The first appellate court must make an independent assessment and decide whether the conviction or acquittal should stand.
28. The appellant was charged with the offense of Defilement contrary to Section 8(1) as read together with section 8(4) of the Sexual Offences Act No. 3 of 2006.
29. The particulars were that on the 17th day of November 2020, at Mosoch area within Transmara West Sub-County within Narok County, intentionally and unlawfully caused his penis to penetrate the vagina of E.B., a girl aged 15 years.
30. He also faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* no 3 of 2006. The particulars were that on the 17th day of November 2020, at the Mosoch area of Kilgoris town within Transmara West Sub-County within Narok County, intentionally and unlawfully touched the vagina of E.B., a girl aged 15 years, without her consent.
31. To sustain a conviction in a defilement charge, as was held in *Charles Wamukoya Karani v Republic*, quoted with approval by Aburili J. in *Simon Oduor Oloo versus Republic (2022) eKLR*, the prosecution has to establish the existence of the three ingredients constituting the offence. The court stated, "the critical ingredients forming the offense of defilement are: age of the complainant, proof of penetration, and positive identification of the assailant."
32. Age: The complainant, PW1, testified that she was 14 years old, born on 14th September 2007, and a class 7 pupil at [Particulars Withheld] Primary School. Her age assessment form was produced by the Clinical Officer, PW3, as prosecution exhibit 4. It confirms that her approximate age was 15 years.



33. In Francis Omuroni versus Uganda, Court of Appeal criminal appeal No. 2 of 2000, the court rendered itself as follows: "In defilement cases, medical evidence is paramount in determining the age of the victim, and the doctor is the only one who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence, age may also be proved by birth certificate, the victim's parents or guardian, and by observation and common sense."
34. In the present case, the minor/complainant's testimony and the age assessment form established the minor's age.
35. Penetration: The complainant testified that her mother sent her to purchase cooking oil. On her way back, she met the appellant, who asked her to go with him into a maize plantation. When she declined, the appellant pulled her into the maize plantation, fell her to the ground, removed his trousers and the complainant's inner wear and had sex with her. He then arose and left.
36. PW2, the complainant's mother, met the complainant while she was leaving the maize plantation. The complainant disclosed to her that the appellant had defiled her. Consequently, PW2 took the complainant to the police station and later to the hospital where the complainant was examined and treated.
37. The clinical officer, PW3, testified and stated that the minor had the following injuries:
 - Both labia were swollen.
 - The clitoris was hyperemic.
 - The hymn was broken, and there was discharge.
 - Pus cells were seen on lab examination.
38. The Clinical Officer concluded that the minor had been defiled. She produced the medical examination report (P3 form) as exhibit 1, treatment notes dated 18th November, 2020 as exhibit 2, and the PRC form as exhibit 3.
39. Penetration is proved by the victim's evidence, corroborated by medical evidence. (See Onzare versus Republic (criminal appeal 15 of 2023) (2024) KEI-IC 494 (KLR) (25 January 2024) (judgment), para 23.) The findings by the Clinical Officer corroborate the complainant's testimony that there indeed was penetration.

Identification:

40. The complainant testified that she knew the appellant before as a distant neighbor. PW2, the complainant's mother, clarified further that she has been neighbors with the appellant at Mosochu for more than 10 years. Further, she first knew the appellant when he was a young child, and at that time, the complainant was still a breastfeeding toddler. PW2's testimony buttresses the complainant's assertion that she knew the appellant well, having been neighbors since the time that she was still a breastfeeding toddler up to the time of the defilement when she was 14 years of age.
41. Madan J.A in Anjononi and others vs the Republic (1980) KLR, quoted in Daniel Muthomi Marigu & 4 others vs Republic (2021) eKLR, held: " this however was a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other."



42. As such, with the sufficient light given that the offense occurred at around 6 pm and the close proximity, she would unerringly recognize the appellant during the commission of the offense.

Sentencing:

43. In arriving at the sentence, the appellant’s mitigation was considered. The learned trial magistrate also considered that it was his first offense, but also a serious one, committed in a very violent and inhuman manner. The court concluded that a 20-year sentence was ideal under the circumstances. It is noteworthy that the maximum sentence for the offense of defilement is life imprisonment, while the statutory minimum sentence for the particular age bracket under section 8(4) of the *Sexual Offences Act* is 15 years.

44. Thus, the Appellant’s 20-year sentence falls within the legal range. It is also important to clarify that the court lacked the discretion to impose a sentence below the statutory minimum. The sentence of 20 years also provides the appellant with an opportunity to reintegrate into society after its completion. In any case, the sentence is the mandatory minimum sentence, which this court has no mandate to interfere with.

45. However, the prosecution concedes that the time of service of the sentence may be calculated from 16th March 2021, when the appellant was first arraigned in court. This calculation aligns with Section 333(2) of the Criminal Procedure Code, CAP 75, Laws of Kenya, which allows the period spent in custody before sentencing to be deducted from the total sentence.

46. By ensuring the time served is properly considered, the court adheres to principles of fairness and procedural transparency, acknowledging the appellant’s custody duration during the trial without bond.

47. Thus, the court finds no merit in the appeal and makes the following order;
i. The appeal on conviction and sentences is dismissed; however, the sentence shall be computed as from 16.3.2021, when he was taken to court for the plea.

DATED AND DELIVERED AT KILGORIS VIA MICROSOFT TEAMS THIS 6TH DAY OF FEBRUARY, 2026.

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CHARLES KARIUKI
JUDGE

