



REPUBLIC OF KENYA



KENYA LAW
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**Anyero v Republic (Criminal Appeal E061 of 2024)
[2026] KEHC 2159 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL APPEAL E061 OF 2024
KW KIARIE, J
FEBRUARY 26, 2026**

BETWEEN

PAUL AKELO ANYERO APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case NO. E033 of 2023 of the Chief Magistrate's Court at Migori by Hon. N. Wairimu, Senior Principal Magistrate)

JUDGMENT

1. Paul Akelo Anyero, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence are that on the 18th day of June 2023, at Uriri sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of MAO, a child aged thirteen years.
3. The appellant was sentenced to serve twenty years' imprisonment. He was aggrieved and filed this appeal against the conviction and sentence. He raised grounds of appeal as follows:
 - a. The trial court erred in both law and fact by failing to comply with Article 50(2) (g)(h) of the Kenyan Constitution 2010.
 - b. The trial court erred in both law and fact by not considering that the ingredients of the offence herein were not proved to the required standard in law.
4. The respondent did not submit any grounds of opposition or any other submissions.



5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court. I have concluded, having neither seen nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.

6. Article 50 (2) (g) and (h) of *the Constitution* of Kenya provides:

Every accused person has the right to a fair trial, which includes the right—

(g) to choose and be represented by an advocate, and to be informed of this right promptly;

(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

7. Although the appellant contended that the trial court failed to comply with this Article, the record displaces this contention. When he was taken to court, and before the plea was taken, this is what transpired:

Court (to the accused): Article 5(2) (g) of *the Constitution* of Kenya gives a right to choose and be represented by an advocate. You are encouraged to exercise the said right. You are hereby informed that you are entitled to apply to the legal aid board for assistance should you so desire.

Accused – I ask for time so that I get well before I can take a plea.

This ground lacks merit.

8. An offence of defilement is established against an accused person when the prosecution has proved the following ingredients:

a. That there was penetration of the complainant's genitalia;

b. That the accused was the perpetrator and

c. The victim must be below eighteen years old.

This position was echoed in the case of *Fappyton Mutuku Ngui vs Republic* [2012] eKLR. Ngugi J. (as he was then) said:

Going by this definition of defilement... the issues which the court needs to determine...first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child; and finally, whether the penetration was by the Appellant.

9. I will determine if the prosecution proved these ingredients to the required standards.

10. The complainant underwent an age assessment at Migori County Referral Hospital by Dr Roy Gucha. He estimated that she was 13 years old. Her age was thus confirmed to meet the necessary standard.

1. MAO (PW2) testified that on the day in question, she was sent to sell bananas. During her walk, she encountered the appellant, who wanted to buy bananas for some workers on his land. He asked if she had bananas worth Kshs. 100, but he eventually bought Kshs. 20 worth. He offered to carry the bananas for her, but she refused. They were within a sugar cane plantation. He stepped on her slippers, causing her to fall. When she cried out, he grabbed her by the neck



and strangled her. He then took out a knife and threatened her, afterwards undressing her and defiling her.

2. As she was being defiled, she told him that some sugar cane stumps were hurting her. He offered to fetch a leso (a traditional cotton garment worn by women in East Africa). When he went to get it, she escaped. She was wearing her T-shirt and holding her slippers. Some women assisted her by providing a skirt and instructed her to report to the chief.
3. On the way, she met with boda-boda riders who enquired from her what the matter was. When she recounted her ordeal, they offered to accompany her to locate the perpetrator. They found the appellant at the river eating her bananas. They arrested and beat him up after he identified him as the culprit.
4. Maureen Adhiambo Omondi (PW1) is a clinical officer at Uriri sub-county hospital. She examined the complainant on 19th June 2023. She observed the following:
 - a. Redness of the eye, which was painful,
 - b. Bruised left ear lobe, which was tender,
 - c. Tender abdomen,
 - d. Mud around the external genitalia,
 - e. Both labia were inflamed and red and were tender,
 - f. Whitish discharge was noted on the external genitalia,
 - g. The hymen was broken, though not recently, and
 - h. Finger nail scratch marks were seen on the neck.

She concluded there was defilement.

15. Paul Akelo Anyero, the appellant, denied any participation in the offence and also stated that he did not know the complainant.
16. The proviso to section 124 of the *Evidence Act* states:

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.
17. The medical findings supported the complainant's evidence. Although the appellant claimed ignorance of the complainant, he was arrested shortly after the crime. Consequently, mistaken identity was not an issue.
18. The appellant contended that the sentence was harsh. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a



somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

19. Section 8 (3) of the *Sexual Offences Act* provides as follows:

A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

20. In this case, the minor was thirteen years old. The law mandates a minimum sentence, and any deviation would be illegal. The appellant committed a serious offence. He has not shown any reasons indicating that the trial magistrate used an incorrect principle or missed any important factor. I have noted that he was in custody during the trial. Therefore, his sentence will commence on June 18, 2023, the date of his arrest.

21. Based on the analysis of the evidence, I conclude that the conviction was based on sound evidence. The appeal lacks merit and is dismissed.

DELIVERED AND SIGNED AT MIGORI ON THIS 26TH DAY OF FEBRUARY 2026

KIARIE WAWERU KIARIE

JUDGE

