



REPUBLIC OF KENYA



KENYA LAW
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**Aram v Republic (Criminal Appeal E111 of 2022)
[2026] KEHC 2134 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL APPEAL E111 OF 2022
KW KIARIE, J
FEBRUARY 25, 2026**

BETWEEN

JAPHETH SAMSON ARAM APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case NO. E016 of 2020 of the Chief Magistrate's Court at Migori by Hon. J.S. Munguti, Senior Principal Magistrate)

JUDGMENT

1. Japheth Samson Aram, 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 5th day of July 2018, at [Particulars Withheld], Suna East sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of R.A.A, a child aged fourteen years.
3. The appellant was sentenced to serve thirteen years' imprisonment. He was aggrieved and filed this appeal against the conviction and sentence. He raised grounds of appeal as follows:
 - a. The trial magistrate erred by relying on the evidence that was full of contradictions.
 - b. The court erred by admitting evidence that had no nexus to the appellant and shifted the burden of proof from the prosecution.
 - c. That the court erred by finding that the charge had been proved.
 - d. That the court erred by imposing an irregular, punitive and harsh sentence.
4. The respondent neither opposed the appeal nor filed any submission.



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, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs the Republic* [1972] EA 32.
6. 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.

7. I will determine if the prosecution proved these ingredients to the required standards.
8. Dr. Joseph Otieno, a dental surgeon at Migori Hospital, examined R.A.A. for age assessment. He determined that she was 14 years old. As a result, the complainant's age was successfully verified as required.
9. R.A.A. (PW1) testified that the appellant lured her with a promise of giving her some Tanzanian money and then defiled her in the forest. She stated that she was sent home from school at the time. They encountered the appellant, who was a hawker.
10. PW3, who was with her, also testified similarly. She stated that the appellant asked her to follow behind slowly so that he could speak with PW1. When they reached a forest, he instructed her to wait, and he and PW1 entered. She saw them engage in sexual intercourse. After they were gone for a while, she left for school. Later, the appellant went to their school to sell his items and was arrested after being identified by them.
11. Dr. J. Magati (PW6) examined the complainant on 5th July 2018. He observed the following:
 - a. She had not changed clothes.
 - b. Her vagina was normal without any lacerations or tears.
 - c. Her hymen was broken, an indication she was sexually active.
 - d. No bleeding was noted.
 - e. No sperm were noted on the high vaginal swab.
12. The examination took place 7 hours after the alleged offence. The complainant told him that she had sex with someone else, not the appellant.
13. The medical evidence did not support the prosecution's case. The examination, carried out only hours after the alleged offence, revealed no signs of defilement. The doctor's testimony that the complainant cleared the appellant was relevant and should have favoured the appellant.



14. Based on the analysis of the evidence, I conclude that the conviction was unsafe. Therefore, I quash the conviction and set aside the sentence. The appellant is to be released unless there is a lawful reason to detain him.

DELIVERED AND SIGNED AT MIGORI ON THIS 25TH DAY OF FEBRUARY 2026

KIARIE WAWERU KIARIE

JUDGE

