



REPUBLIC OF KENYA



**KENYA LAW**  
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**Cheparuso v Republic (Criminal Appeal E055 of 2023)  
[2026] KEHC 2135 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E055 OF 2023  
KW KIARIE, J  
FEBRUARY 25, 2026**

**BETWEEN**

**JOHN NTAIYA CHEPARUSO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case NO. E027 of 2022 of the  
Principal Magistrate's Court at Rongo by Hon. S.N. Mutava, Resident Magistrate)*

**JUDGMENT**

1. John Ntaiya Chuparuso, 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 1<sup>st</sup> day of December 2022, at [Particulars Withheld], Awendo sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of D.A.N., a child aged thirteen years.
3. The appellant was sentenced to serve fifteen 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 law and in fact in convicting the appellant, relying on inconclusive, flawed, and mistaken evidence of identification under unfavourable circumstances.
  - b. The trial court erred in law and in fact in convicting the appellant of defiling the victim without weighing the circumstances in the prosecution's witness statement under which the defilement came to be made pursuant to section 33 of the [Sexual Offences Act](#) No. 3 of 2006.
  - c. The trial court erred in law and in fact in not making a finding that penetration by the appellant was proved beyond a reasonable doubt standard.



- d. The trial court erred in law and in fact in not considering material contradictions, discrepancies and inconsistencies that were inconsequential to the conviction.
  - e. That the trial court erred in law and in fact in not appreciating the appellant's defence that overwhelmed the prosecution's case.
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. 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. A copy of the complainant's birth certificate was submitted as an exhibit, indicating her birth date as 21 November 2009. As of 1 December 2022, she was 13 years old. Her age was established to the required standard.
9. D.A.N. (PW1) testified that the appellant called her, and she thought he wanted to send her somewhere. Instead, he took her to a house where he assaulted her. Afterwards, they went outside, and she heard her mother calling. The appellant then took her to a maize plantation where they hid. She later escaped to her grandmother's home and told her about her ordeal.
10. John Ntaiya Chuparuso, the appellant, denied any acquaintance with the appellant and denied having defiled her.
  1. PW2, the complainant's mother, testified that while searching for her daughter, she peeped through a barbed wire fence and saw her with a Maasai man. She called out to her three times, but received no response. The two then ran into a sugarcane plantation.
  2. Although she disagreed with the complainant about entering a maize plantation, I believe the contradiction is minor. Maize and sugar cane may appear similar at night from a distance.
  3. This evidence corroborated that of the complainant that she was with the appellant.
  4. Evelyne Mbaka (PW3) is a clinical officer at Awendo sub-county hospital. She examined the complainant on 2<sup>nd</sup> December 2022. She observed the following:
    - a. She had a whitish discharge from her genitalia.



- b. Her vagina was normal without any lacerations or bruises.
- c. Her hymen was broken.
- d. A high vaginal swab showed epithelial cells, an indication of an inflammation caused by friction.

She concluded there was defilement.

- 15. The medical evidence supported the prosecution's case. Although the appellant claimed she did not know the complainant, she repeatedly referred to him as John, suggesting they were acquaintances.
- 16. 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 25<sup>TH</sup> DAY OF FEBRUARY 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**

