



**Magezi v Republic (Criminal Appeal E076 of 2023)  
[2026] KEHC 2125 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E076 OF 2023  
KW KIARIE, J  
FEBRUARY 25, 2026**

**BETWEEN**

**LAMECK MARASH MAGEZI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E046 of 2022 of the Chief Magistrate's Court at Migori by Hon. Angela Munyony, Resident Magistrate)*

**JUDGMENT**

1. Lameck Marash Magezi, 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 13<sup>th</sup> day of September 2022, at [Particulars withheld] village, Nyatike sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of VAO, a child aged twelve 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 made errors in both law and fact by not adhering to Article 50(2) (g)(h) of the Kenyan Constitution 2010.
  - b. The trial court made errors in both law and fact by failing to recognize that the elements of the offence were not proven to the necessary legal and factual standard.
  - c. The trial court made errors in both legal and factual aspects by failing to recognize that the case contained serious contradictions, which should have led to a complete acquittal rather than a conviction.



4. The state opposed the appeal through M/s Elizabeth Kogos, learned counsel. She contended that the appeal lacked merit.
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. Although the appellant argued that the trial court did not comply with Article 50(2)(g)(h) of the Kenyan Constitution 2010, he did not provide further explanation. Therefore, I dismiss this ground of appeal.
7. 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.

8. I will determine if the prosecution proved these ingredients to the required standards.
9. Dr. Joseph Otieno (PW3), a dental surgeon at Migori Hospital, examined VAO for age assessment on September 20, 2022. He determined that she was 12 years old. As a result, the complainant's age was successfully verified as required.
10. VAO (PW1) testified that the appellant, who was known to her, went to their home and gave her brother Kshs. 10.00. He (her brother) went to the shops. When he was away, he defiled her. She referred to him as a "Sukuma."
11. The evidence of MA (PW2) is that upon her return home on the 13<sup>th</sup> day of September 2022, the complainant reported to her that the appellant had defiled her. The matter was reported, and the complainant was taken for examination.
12. Victor Otieno Ngitu (PW4) examined the complainant on 14<sup>th</sup> September 2022. He observed the following:
  - a. She had pain in the lower abdomen region.
  - b. She had a foul-smelling discharge from her vagina, an indication of an infection.
  - c. Her hymen was freshly broken.
  - d. Bleeding from the vagina.
  - e. She was unable to walk properly.
13. He therefore concluded that she had been defiled.
14. The prosecution, therefore, proved penetration to the required standards.



15. Lameck Marash Magezi, the appellant, contended that he was falsely implicated by PW2 because she was fearing he could bewitch her, for she was a Sukuma. He did not elaborate, but this defence was flimsy. He did not confront this witness with the allegation. During cross-examination, he alleged they were lovers, which was denied. The defence was clearly an afterthought and rightly dismissed.
16. The complainant knew the appellant, and I am satisfied that the prosecution established that he was the minor's defiler.
17. Section 8(3) of the *Sexual Offences Act* provides:

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.
18. The appropriate sentence was meted out.
19. The conclusion from the above analysis of the available evidence is that the appeal has no merit and the same is dismissed.

**DELIVERED AND SIGNED AT MIGORI ON THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**

