



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
CRIMINAL APPEAL NO. E103 OF 2024

GEORGE OTIENO OKONG'O..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in S.O. Case No. E027 of 2023 of the Principal Magistrate's Court at Rongo by Hon. S.N. Mutava, Resident Magistrate)

JUDGMENT

1. George Otieno Okong'o, the appellant herein, 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. The particulars of the offence were that on the 24th day of August 2023, at Bethel area, in Rongo Sub-County within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of M.S.O., a child aged seventeen years.
3. The appellant was sentenced to fifteen years' imprisonment and has appealed against both his conviction and sentence. He raised the following grounds of appeal:
 - a) The learned trial magistrate erred in law and fact by convicting the appellant, notwithstanding that the ingredients forming the offence were not proved to the required standard.
 - b) The learned trial magistrate erred in law and fact by convicting the appellant without considering the defence that could exonerate him from the offence in question.
 - c) The trial court erred in law and in fact in not appreciating the co-existing circumstances that the complainant had been penetrated and impregnated by somebody else, hence reaching a wrong decision.
 - d) The trial court erred in law and in fact in not making a finding that the prosecution's case was full of contradictions and inconsistencies among its witnesses.

- e) The trial court erred in law and in fact in not making a finding that the trial breached the constitutional rights of the appellant, hence an unfair trial.
4. The respondent did not file any grounds of opposition.
 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 the Republic [1972] EA 32**.
 6. To establish an offence of defilement against an accused person, the prosecution has to prove 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 principle was reflected in the case of **Fappyton Mutuku Ngui v Republic [2012] eKLR**. Ngugi J. (as he then was) stated:

Going by this definition of defilement... the issues 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.

Therefore, I will endeavour to establish whether the prosecution met the required standards.

7. A copy of M.S. O's (PW1) birth certificate states that she was born on 12th September 2006. As of the 24th day of August 2023, she was 16 years and eleven months old.
8. The complainant's age was, therefore, proved to the required standards.
9. In her testimony, M.S. O. (PW1) described how she met the appellant. Following a disagreement with her mother, she travelled to Rongo, where she met the appellant while the appellant was riding a motorcycle. He said he was headed to Homa Bay to collect money from a house. They travelled together, and she asked for water. He then invited her into a house, locked the door, and assaulted her. After he let her go, she encountered the area chief while crying.
10. Silas Adika (PW2) is the chief of Central Kamagambo. He said on the 24th day of August 2023, he met with PW1, who was crying. She identified the home from where she was defiled. The owner of the home is Peterlis Akel Oyata (PW5).
11. Peterlis Akel Oyata (PW5) testified that he was arrested because the area chief accused him of defiling PW1. However, PW1 denied these allegations. He had given the appellant his house keys to deliver some maize using a boda-boda.

12. When Pope Ochieng (PW4) examined the complainant, he made the following findings:

- a) She had bruises on the labia minora;
- b) There was a whitish discharge, and
- c) Her hymen was broken.

He therefore concluded that there was penetration.

13. George Otieno Okong'o, the appellant, denied any involvement in the offence and claimed not to know Peterlis Akel Oyata (PW5). I am satisfied, therefore, that the appellant's conviction was based on watertight evidence.

14. The conclusion from the preceding analysis of the evidence on record is that the appeal lacks merit. The same is dismissed.

Delivered and signed at Migori, this 26th day of February 2026

KIARIE WAWERU KIARIE

JUDGE