Owino v Republic (Criminal Appeal E096 of 2024)
[2026] KEHC 2209 (KLR) (26 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2209 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL E096 OF 2024

KW KIARIE, J

FEBRUARY 26, 2026

BETWEEN

WYCLIFFE OTIENO OWINO ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the original conviction and sentence in S.O. Case NO. E024 of 2023 of the Principal Magistrate's Court at Rongo by Hon. C.N.C. Oruo, Principal Magistrate)

JUDGMENT

1. Wycliffe Otieno Owino, 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 28th day of July 2023, at [Particulars Withheld], Awendo sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of P.A.W., 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 learned trial magistrate erred in law and fact in convicting and sentencing the appellant for the offence of defilement, as the offence was not proved beyond a reasonable doubt.

    b. The learned trial magistrate erred both in law and in fact in failing to find that, having been defiled by One William Odhiambo on 27th July 2023, the complainant, the alleged defilement by the appellant on 28th July 2023, was a frame-up against the appellant.

    c. The learned trial magistrate erred in law in failing to consider the appellant's sworn defence, which, if considered, would have resulted in the charges against the appellant being dismissed and the appellant acquitted.

d. The learned trial magistrate erred both in law and in fact in sentencing the appellant to 20 years' imprisonment.

e. The mandatory minimum sentences prescribed in the *Sexual Offences Act* are unconstitutional and limit the exercise of judicial discretion.

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. The complainant underwent an age assessment at Awendo Sub-County Hospital, where she was estimated to be 13 years old. Her age was thus confirmed to meet the necessary standard.

9. (PW2) testified that while she was on the road, the appellant called her for a sugar cane. He handed her the cane and then pulled her into a sugar cane plantation, where he defiled her. On the previous day, another person had defiled her.

10. PW5, the complainant's mother, testified that she was summoned to her daughter's school and told that her daughter was having trouble walking. She explained that the appellant had assaulted her after offering her a piece of sugar cane. Additionally, she stated that she had been sexually assaulted by another individual.

11. Caroline Onyango (PW1) is a clinical officer at Awendo sub-county hospital. She examined the complainant on 4th August 2023. She observed the following:

a. She had both old and fresh lacerations on the majora.

b. Foul-smelling vaginal discharge.

c. High vaginal swab showed she had contracted a sexually transmitted infection.

She concluded there was defilement.

12. The appellant was examined at the same facility, where it was found that he had a sexually transmitted infection similar to the complainant.

13. Wycliffe Otieno Owino, the appellant, denied any participation in the offence and also stated that he did not know the complainant.

14. 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.

15. The complainant's evidence was corroborated by the medical findings. Though the appellant denied any knowledge of the complainant, it was evident that they were neighbours and the complainant knew him well.

16. 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.

17. 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.

18. In this case, the minor was thirteen years old. The minimum sentence required by law is mandatory; any deviation would be unlawful. The appellant committed a very grave offence. He has not provided any reasons to demonstrate that the learned trial magistrate acted upon some incorrect principle or overlooked some material factor.

19. 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