



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onderi v Republic (Criminal Appeal E023 of 2025)  
[2026] KEHC 2106 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2106 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E023 OF 2025  
KW KIARIE, J  
FEBRUARY 25, 2026**

**BETWEEN**

**SILVANUS AGAK ONDERI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case NO. E041 of 2023 of the  
Principal Magistrate's Court at Rongo by Hon. C.N. Oruo, Principal Magistrate)*

**JUDGMENT**

1. Silvanus Agak Onderi, 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 19<sup>th</sup> day of December 2023, at [Particulars Withheld], North Kamagambo sub-location in Rongo sub-county within Migori County, he intentionally and unlawfully caused his penis to penetrate the vagina of S.A., 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 appellant was not furnished with all the documentary evidence, like all the witnesses' statements, the investigation diary and the exhibit memo, which were used against him in court before the onset of the case. accused person.
  - b. The appellant was not accorded a fair trial as enshrined in Article 50(2) of the 2010 Constitution.
  - c. The ingredients of the offence were not established to the required standards.



- d. That the prosecution's case was marred with contradictions, inconsistencies, discrepancies and glaring gaps.
  - e. That some vital witnesses mentioned were not called to testify.
  - f. That alibi defence was ignored by the trial magistrate.
  - g. The mandatory nature of the sentence imposed on the appellant herein is unconstitutional and lacks the court's discretion.
4. The state did not file any grounds of opposition or 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 the Republic* [1972] EA 32.
  6. When the case began before the learned trial magistrate, the appellant was represented by Mr Ouko, advocate. Throughout the proceedings, the defence counsel never claimed that he had not received copies of statements or other documents. On January 5th, 2024, he announced to the court that he was prepared to proceed. Consequently, the claim of failure to be provided with the necessary documents is unfounded.
  7. Although the appellant claimed the trial court failed to comply with Article 50 (2) of the Kenyan Constitution 2010, he did not offer an additional explanation. Consequently, I reject this ground of appeal.
  8. 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.
  9. I will determine if the prosecution proved these ingredients to the required standards.
  10. The complainant in her evidence said she was 12 years old. However, when Lilian Nyaboke, a clinician, examined her, she determined that she was 12 years old. As a result, the complainant's age was verified as required.
  11. S.A. (PW1) testified that she was with her visually impaired aunt when the appellant, their neighbour, called her over. Her aunt told her to find out what he wanted. When she approached, he offered her porridge, which she refused. He then grabbed her, tore her trousers, and assaulted her, causing her to bleed. At the time of the defilement, he tied her mouth with a sweater. Notwithstanding this, she did not tell her aunt what had happened upon her return home.
  12. H.A. (PW2) is the complainant's visually impaired aunt. She testified that on 19 December 2023, the appellant called the complainant. When she went to see the appellant, there was a delay in her return.



Later, upon noticing that the complainant was having difficulty sitting, she confronted her, and the complainant then disclosed what the appellant had done to her. She was taken to the hospital, and the incident was reported to the police.

13. On December 19<sup>th</sup>, 2023, Lilian Nyaboke (PW4), a clinical officer at Rongo Sub-County Hospital, examined the complainant and made the following observations.
  - a. She had a broken hymen;
  - b. She had a discharge from her vagina; and
  - c. High vaginal swab showed the presence of epithelial cells, an indication of sexual intercourse.
14. She therefore concluded that she had been defiled.
15. The prosecution, therefore, proved penetration to the required standards.
16. Silvanus Agak Onderi, the appellant, stated he previously had a good relationship with PW2, but it changed after she informed their neighbour that her cow had entered his property. This claim was first introduced during the defence, and PW2 was not asked to provide her account of it. The learned trial magistrate correctly dismissed this as an afterthought.
17. After reviewing the evidence on record, I am satisfied that the prosecution established that the appellant was the minor's defiler.
18. 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.
19. I find that the sentence meted out was the prescribed one, and there was nothing unconstitutional about it.
20. 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**

