



**Mongare v Director of Public Prosecutions (Criminal Appeal
E019 of 2025) [2026] KEHC 2864 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E019 OF 2025
TW CHERERE, J
FEBRUARY 12, 2026**

BETWEEN

JIMMYSON NYAMONGO MONGARE APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

*(Being an appeal from judgment and conviction in Nyamira
MCSO E018 of 2024 by Hon. B.Jumar (RM) on 07th May 2024)*

JUDGMENT

1. Jimmyson Nyamongo Mongare (the Appellant), was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act* (the Act) in Nyamira Sexual Offences Case E018 of 2024. It was alleged that on diverse dates between 14th and 18th February 2024 in [Particulars Withheld] in Nyamira County, he intentionally and unlawfully caused his penis to penetrate the vagina of MN, a child aged 15 years.
2. He faced an alternative count of committing an indecent act with a child contrary to section 11 (1) of the Act. The accusation was that on the dates and place stated above, he intentionally and unlawfully touched the breasts of MN, a child aged 15 years.
3. The prosecution case rested on the testimony of 7 witnesses, namely, the complainant (PW1), the Complainant's mother (PW2), complainant's father (PW3), passerbys (PW4 and PW5), investigating officer (PW6) and a Clinical Officer at the Ekerenyo Sub-County Hospital (PW7).
4. The defence case rested on the Appellant's sworn testimony. He did not call any witness in support of his defence.



5. At the conclusion of the case, the trial Magistrate returned a verdict of guilty on the main count. After considering the appellant's mitigation, the trial Magistrate sentenced him to serve 20 years imprisonment as per the provisions of section 8 (3) of the Act.
6. The Appellant, being dissatisfied with both conviction and sentence, preferred the present appeal on grounds:
 1. That the learned trial magistrate erred in law and fact in finding that penetration was proved beyond reasonable doubt.
 2. That the learned trial magistrate erred in law in failing to properly evaluate and reconcile the medical evidence with the complainant's testimony.
 3. That the learned trial magistrate erred in law and fact in relying on uncorroborated and inconsistent evidence to found a conviction.
 4. That the learned trial magistrate erred in law in failing to resolve material contradictions and doubts in favour of the Appellant.
 5. That the conviction was against the weight of the evidence on record.
 6. That the sentence imposed was harsh, excessive, and not proportionate in the circumstances.
7. This being a first appeal, the court's duty is as was stated by the Court of Appeal in *Mark Oiruri Mose v Republic* [2013] eKLR that:

“It has been said over and over again that the first appellate Court has the duty to revisit the evidence tendered before the trial Court afresh, analyze it, evaluate it and come to its own independent conclusion on the matter but always bearing in mind that the trial Court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and to give allowance for that.”
8. The court directed that the appeal be disposed off by way of written submission but none were filed.
9. I have reviewed the record and, in my view, the issues for determination are:
 - 1)) Whether the offence of defilement was proved to the required standard
 - (b) whether the conviction and sentence were safe
10. The Appellant was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*. Section 8(1) provides that:

“A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.”
11. For the prosecution to secure a conviction in a charge under section 8 (1) and (3) of the Act, it must establish beyond reasonable doubt the following elements:
 - (a) the victim must be between the age of twelve and fifteen years
 - (b) prove of penetration and
 - (c) The identity of the perpetrator must be established. These three ingredients must be proved.



12. Age is a foundational ingredient of the offence and determines both criminal liability and sentence. The prosecution produced a birth certificate (PExh 1) indicating that the complainant was 15 years old at the time of the alleged offence and the authenticity of the birth certificate was not challenged.
13. Upon independent re-evaluation of the record, this Court is satisfied that the prosecution proved beyond reasonable doubt that the complainant was a child within the meaning of the Act.
14. Penetration constitutes the gravamen of the offence of defilement. Section 2 of the *Sexual Offences Act* defines “penetration” as:

“the partial or complete insertion of the genital organs of a person into the genital organs of another person.”
15. The complainant (PW1) testified that during the period between 14th and 18th February 2024 when she stayed at Gechiko’s home, she was subjected to sexual intercourse by two men, namely Joshua and the Appellant. She described that each man removed her clothes and inserted his genital organ into her vagina on separate occasions. That description falls squarely within the statutory definition of penetration.
16. The medical evidence tendered by PW7 showed that the hymen was absent but not freshly broken, and that there were no tears or spermatozoa detected. The examination was conducted several days after the alleged acts.
17. It is settled law that medical evidence is corroborative and not mandatory for proof of penetration. The absence of fresh injuries or spermatozoa does not negate penetration, particularly where examination is delayed and repeated sexual activity is alleged.
18. From the foregoing, this Court is satisfied that penetration was proved beyond reasonable doubt.
19. On the question whether the Appellant was properly identified as one of the perpetrators, it is settled that identification is a critical element in criminal trials. A conviction cannot stand unless the court is satisfied beyond reasonable doubt that the accused person was the author of the offence.
20. The decisive issue is therefore whether the prosecution proved beyond reasonable doubt that the Appellant was one of the two persons who defiled the complainant. As stated in *Kinyanjui v Republic* (Criminal Appeal E018 of 2022) [2025] KECA 1543 (KLR), proof of age and penetration alone does not suffice. The prosecution must, in addition, establish that it was the accused who committed the unlawful act, as identity and participation are essential elements of the offence.
21. The complainant testified that during the period she was away from home she was defiled by two men, namely Joshua and the Appellant. She stated that the Appellant met her on the road, persuaded her to accompany him to Gechiko’s home, and later engaged in sexual intercourse with her. She maintained that both men defiled her on separate occasions.
22. On 18th February 2024 at about 7.00 p.m., the complainant was returned home by the Area Chief. Upon her return, she reported the incident to her mother (PW2) and father (PW3), who received the report simultaneously. Both testified that she named Joshua and the Appellant as the perpetrators.
23. In his sworn defence, the Appellant denied escorting the complainant to Gechiko’s home or engaging in sexual intercourse with her. He denied being one of the perpetrators. The burden of proof, however, remained on the prosecution throughout.



24. It was common ground that the complainant and the Appellant were neighbours and that she knew him well. This was therefore not a case of mistaken identity involving a stranger. The direct evidence implicating the Appellant was that of the complainant.
25. The complainant gave a clear and consistent account of the Appellant's involvement. She identified him by name, described the circumstances under which he took her to Gechiko's home, and stated that he had sexual intercourse with her. Her evidence remained intact under cross-examination. Medical evidence confirmed that she had been defiled, thereby supporting her testimony as to the occurrence of the offence.
26. As this is a sexual offence, the Court must also consider compliance with section 124 of the *Evidence Act*. The proviso requires that where a conviction is founded on the sole evidence of the complainant, the trial court must record that it believes the complainant and give reasons for that belief.
27. The record shows that the trial court evaluated the complainant's testimony, her demeanour, and the consistency of her narration, and expressly found her to be truthful. It gave reasons for accepting her evidence, including her prior knowledge of the Appellant and the absence of any apparent motive to falsely implicate him.
28. The trial court also considered the medical evidence confirming defilement. While such evidence does not in itself establish the identity of the perpetrator, it reinforces the complainant's account. This approach accords with the decision of the Court of Appeal in *Okemwa & another v Republic* [2026] KECA 183 (KLR), which reaffirmed that credible evidence of the victim is sufficient to found a conviction without corroboration, and that supporting medical evidence may lend assurance to that testimony.
29. Upon independent re-evaluation of the entire record, this Court is satisfied that the trial court properly directed itself on the law and was entitled to rely on the complainant's evidence. The prosecution proved beyond reasonable doubt that the Appellant was one of the persons who defiled the complainant. The conviction is accordingly upheld.
30. Having affirmed the conviction, the Court turns to sentence. The Appellant was convicted under section 8(1) as read with section 8(3) of the *Sexual Offences Act*.
31. The complainant was 15 years old at the time of the offence. Section 8(3) provides that defilement of a child aged between twelve and fifteen years attracts imprisonment for a term of not less than twenty years. The provision is mandatory and leaves no discretion to impose a lesser sentence.
32. The trial court sentenced the Appellant to twenty (20) years' imprisonment, being the statutory minimum. The sentence is lawful and unassailable.
33. In the result, the appeal against conviction and sentence is dismissed in its entirety.

DELIVERED AT NYAMIRA THIS 12TH DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

Appellant - Present

For Respondent - Mr. Chirchir (SADPP)

