



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njeri v Republic (Criminal Appeal E018 of 2025)
[2026] KEHC 2566 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL APPEAL E018 OF 2025
BM MUSYOKI, J
FEBRUARY 27, 2026**

BETWEEN

PAUL NGANGA NJERI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from conviction and sentence in the Chief Magistrate's Court at Thika
(Hon. M.W. Wanjala PM) in criminal case number E755 of 2022 dated 23-06-2023)*

JUDGMENT

1. This is an appeal from the lower court where the appellant was charged with defilement contrary to Section 8(1) as read together with Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 particulars being that on the 10th day of March 2022 at [Particulars Withheld], Juja Sub County within Kiambu County intentionally and unlawfully caused his penis to penetrate the vagina of M.N.M. a child aged 15 years. There was an alternative count of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006 whose particulars were that on diverse days between 10th March, 2022 and 13th March, 2022 at [Particulars Withheld], Juja Sub County within Kiambu County, unlawfully touched the vagina of M.N.M. a child aged 15 years.
2. The prosecution called 4 witnesses while in his defence, the appellant gave unsworn statement and did not call any witness. The trial court found the appellant guilty in the main count and sentenced him to serve fifteen years in prison which the appellant was dissatisfied with preferring this appeal based on the following grounds quoted verbatim;
 1. That the learned trial Magistrate erred in both law and facts on whereby prosecution case was not proved beyond reasonable doubt as established in Section 107 of the *Evidence Act*.



2. That the learned trial Magistrate erred in both law and facts on whereby the main ingredients that is age, penetration and penetration were not proved as law requires.
 3. That the learned trial Magistrate erred in both law and facts by failing to observe that the victim was not truthful.
 4. That the learned trial Magistrate erred in both law and facts on where the medical evidence didn't link the appellant with the offence.
 5. That the learned trial Magistrate erred in both law and facts on whereby the entire prosecution case was narrated with gross contradiction, inconsistencies and illegalities.
 6. That the learned trial Magistrate erred in both law and facts on whereby there were no points of determination in accordance to Section 169(1) of the C.P.C.
 7. That appellant may adduce more grounds during hearing of this appeal herein.
3. This is a first appeal. It is trite that in the first appeal, the court conducts the same as a re-hearing where it analyses, evaluates and considers the evidence produced before the lower court afresh and comes to its own independent conclusion but bearing in mind that the unlike itself, the lower court had an advantage of observing the demeanour of the witnesses as it took their evidence. This has been pronounced in many judicial decisions including *Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR) where the Court of Appeal reiterated that;
- ‘ This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.’
4. Based on the above position in law, this court will reproduce abridged version of the evidence produced before the lower court to enable it given an analysis of the same before reaching an independent conclusion of guilt or otherwise of the appellant.

The prosecution's case

5. The first prosecution witness was the complainant who told that she was 16 years old having been born on 29-01-2006 and that she was schooling at Shiners Group of Schools. She added that on 10-03-2022, she met with the appellant at his place at Witeithie near ACK church having left her home at 7:00 pm. She had met with the appellant the previous day on a Wednesday near their home when he told her to run away from home to his place. The child added that the appellant used to stay at a club known as corner.
6. The complainant had known the appellant since November 2020 through a friend called Maryanne but she did not know whether he wanted her to be his girlfriend. She continued that, she ran away from home and met the appellant near the corner club and he took her to the club and to the room where he used to stay. The appellant asked her not to stress herself because it was like she was in her own house. He then told her that he was going to the work place and locked the house after telling her that he would be back at 11:00 pm.
7. PW1 added that the appellant came back and took a shower and asked her why she had not eaten. The appellant asked her to have sex with him but she told him that it was uncomfortable for her because



- she was in her periods but he forced her to have sex with him without protection. She added that she felt bad and pain because it was her first time to have sex.
8. In the morning, the appellant took shower and went and brought tea for her and then went to clean the club which is normally opened at 8:00 am or 9:00 am. She narrated that she remained in the house and she could cook as the appellant had taken her as his wife. She stayed in house the entire Friday and in that evening, the appellant bought her chips and had sex with her that night. On Saturday, he bought a trouser and a top for her and promised to take her to the salon on Sunday before taking her to his mother.
 9. When the appellant came back on Saturday evening, he told the complainant that he had seen one Mr. Munga, her mother's friend who she normally took as her elder brother outside. She told the appellant that her mother was looking for her but he denied. He told her to go home but she told him that she would be seen and wanted to wait until night. At night they had sex again although she was opposed because her periods normally took one week.
 10. The complainant added that on Sunday morning, the appellant went and bought cabbage and iris potatoes and when he later went to buy chapatis at noon, he was arrested. His friend whose name she could not tell came and informed the complaint that she should leave upon which she went away to her friend called Susan Watiri at around 2:00 pm. Shortly, her elder brother called James Irungu came and told her to go home and she lied to him that she had been at the swimming pool because she feared being beaten by her mother.
 11. The complainant stated further that her mother came and told her to go and record a statement at Witeithe police station. She was then taken to hospital where she was told that nothing had happened. A police officer said that they should go to another hospital upon which they went to Kiandutu where the doctors said that she had had sex. She was tested for HIV and a pregnancy which were both negative.
 12. The complaint identified the appellant in court and added that she went to his place because he had forced her to. She did not know that he would have sex with her. She stated that she did not love the appellant that much and that she was playing with his mind. She added that her mother had warned her against him. She had not differed with her mother at the time she run away from home. The appellant knew that she was school going but did not know how old she was. She stated that she had lied to him that she was 17 years old. She added that he had told her that he thought she was 20 years old. She concluded that her mother had told her that the appellant had a wife and children but when she asked him, he denied.
 13. In cross-examination, the complainant admitted that she lied that she had gone to her auntie called Damaris so that it could not be known that she was at the appellant's place. She also admitted that she had lied that she had slept at a funeral and added that she went back to the police station to write another statement. She added that she was beaten by the police who told her to state the truth. She added that she had recorded an erroneous statement but the one that she wrote later was the correct one. She also admitted that she had written in her statement that the appellant did not do anything to her. She stated further that there were people at the club and she did not shout for help because the sound coming from the speakers at the club was high. She also did not ask for help from the people around because she trusted the appellant.
 14. She was re-examined and clarified that when she went to the police, she recorded untruthful statement and lied that she had not slept at the appellant's house and that she had not had any sexual intercourse with him. She added that her mother's friend Mr. Munga came and asked her to decide whether she wanted to stay with the accused or with her mother. She however insisted that what she was stating in court was the truth.



15. PW2 MW, stated that the complainant who was her 2nd born daughter was 15 years having been born in 2006. She testified that in November 2021, her neighbour asked whether she was the one sending someone working in a bar called Kim's to her house to take tea. She asked Mungai whether he knew him and he answered in the affirmative.
16. PW2 added that Mungai called her in the evening when that person was present and when she asked him whether he was the one used to come to her place, he denied and hurled insults calling her a prostitute and she went away. The witness later asked the child where her cups were and she told her that the appellant used to come while drunk, take tea and thereafter break the cups.
17. On 10-03-2022, she went to work at Thika highway and when she came back, she found the child hanging her cloths on the line at home but she thereafter left. The witness did not see the child again and after looking for her until late in the night without success, she reported at Witeithie police station.
18. PW2 testified further that she looked for the child until Sunday when she met a lady called Wa Mutiso at 10:00 am who told her to go to the bar and ask for a person called Ng'ash who was with the complainant. She met with Mungai and asked him where Ng'ash was. He told her that he was selling beer at corner bar after which she went and reported at Witeithie police station. A police officer was sent and came back with the appellant at around 4:00 pm.
19. The witness added that, she was given one police officer and in company of Mungai, they went to corner bar where they found the complainant's clothes; two trousers, three tops, bra and underpants under the bed in a room at the bar. They took the clothes, to the police station where the appellant said that the clothes belonged to his wife. The witness insisted that the clothes belonged to the child because she is the one who had bought them.
20. She added that two of her neighbours came and said that the complainant had gone back home. She went home and took the complainant to the police station to record a statement. She added that she was not present when the complainant recorded a statement. She confirmed that the complainant initially declined doing anything but she later told her that they used to have sex with the appellant. According to her, the complainant said that it was the appellant who told her to go to a butchery before going to his place.
21. She stated further that, the complainant was a form one day scholar at a school at Kiganjo in 2021. She added that she had told the appellant that the complainant was a child and student and that is when he hurled insults at her. She stated further that the appellant used to see the complainant going to school and in uniform.
22. The child was taken to a private hospital called 24 hours where she entered in the company of a police officer. She was not shown the results and the officer said that the complainant be taken to a public hospital. They took her to Kiandutu and a P3 form was filed. She identified the P3 form and PRC form and produced a photocopy of the complainant's birth certificate as an exhibit.
23. When she was cross examined, the witness stated that she had seen the appellant when she was warning him against her child. She added that she had been informed by one mama Gathoni that her daughter had slept at the appellant's place. She added that she did not find the complainant in the appellant's house but her clothes. The complainant had told the witness that she was staying with the appellant in his said house. The witness stated further that she was not there when the child was carrying her clothes away but she knew them. She added that the complainant left the house wearing a black trouser and a yellow top.



24. Kevin Mungai, the third prosecution witness and who used to work at a bar called Kim club as a watchman told the court that PW2 came and asked him where Nganga was as they used to work at the same place. She left and came back in the evening and found Nganga there and asked him why he used to go to her place. Nganga hurled insults at her by calling her a whore.
25. PW2 later came and told him that her daughter had disappeared. Later, a police officer conducted him through the phone asking where Nganga was. He added that by then, Nganga had left employment at Kim's bar and was now working at corner bar. He accompanied the police officer and PW2 to look for him there and when they reached corner bar, a certain lady showed them where Nganga used to stay but he did not enter inside the bar. Only PW2 and the police officer went inside.
26. The witness added that the police officer came back carrying some clothes. He then went back to his work place at Kim's bar and PW2 later conducted him to go and record a statement. He concluded his evidence in chief by stating that he knew the complainant who was PW2's daughter. He also stated that he never saw the complainant with Nganga together.
27. In cross-examination, PW3 stated that he had never seen the appellant together with the complainant and he did not know why PW2 asked him about the appellant's whereabouts. He also did not know where the complainant was. He also stated that he did not know the appellant's house neither did he know why he was arrested.
28. PW4 was No. 96899 Police Constable Alex John Mapato, then attached to Juja Police Station and formerly at Witeithie Police station. He told the court that on 12.03.2022 while at Witeithie police station, he went through the occurrence book and found that a case of a missing child aged 13-14 years had been allocated to him and he commenced investigations.
29. He added that on 13-03-2022, he received information that the said child had been seen at Witeithie at a club called corner bar in the company of one Paul Nganga who had been employed at the said club as a bartender. He went to the said club on 13th at around 10.00 a.m. in the company of one PC Musa and found Paul going about his duties. He enquired from him about the missing child and he said that he was not aware of the incident. He asked him where he stayed but he lied that he stayed at Muthaara.
30. The witness added that, he got information that Paul was normally housed by the employer at the workplace upon which he proceeded to his house and conducted a search. He found a blue blouse with white spots, a black jeans trouser, a blue jeans trouser, pink blouse and a black bra hidden under the mattress which he produced as exhibits. When they reached at the club, they met with the complainant's mother. When he asked the appellant whose clothes they were, he said that they belonged to his sister. The complainant's mother however identified the clothes as belonging to her daughter. He arrested and took him to Witeithie Police station for questioning.
31. The witness added that at around 2.00 p.m. when the complainant knew that the accused had been arrested, she went home. He told her mother to inform the complainant to go to the station to record a statement which they did. He interrogated the complainant who said that she had been with Paul for the 2 days. She said that they had not done anything. He told them to go to hospital at Kiandutu but on that day, there was nothing going on there. They were therefore to go there the following Monday.
32. The witness added that he decided to prefer abduction charges but later learned that the complainant had a sexual relationship with the accused. After the doctor's report came out, he changed the charges to defilement. When they went to hospital, a PRC and P3 form were filled. The complainant was 16 years old.



33. In cross-examination, PW4 told the court that they found the accused at his place of work cleaning. He could not tell the number of rooms or residents in the plot. He admitted that he had not produced any inventory for what he recovered from the appellant's house. He added that the appellant had never admitted that the exhibits were recovered at his place. He added that in his investigations, he established that the appellant had removed the complainant from the house when he knew that the police officers were coming.
34. Shelmith Ngali was the 5th witness who stated that she was a clinical officer at Kiandutu Health Centre. She added that the complainant was brought to the facility on 17-03-2022 having been suspected of having been kidnapped and defiled by a man known to her. The complainant had changed her clothes and the ones she was wearing were clean.
35. The witness stated further that the complainant was not intoxicated and was in fair general condition. There were no problems on the head, limbs, stomach and she had been given antibiotics and painkillers. The witness examined the complainant's private parts and found the hymen was broken and there was no discharge or abnormalities to the genital area. She produced the P3 form filled on 17-03-2022 and PRC form filled on the same day as exhibits. She added that the complainant was born on 26.1.2006. She also I conducted a urine test and found that there were pus cells in the urine but pregnancy and HIV tests returned negative.
36. She stated in cross-examination that she was the one who examined the complainant and that discharge is normally present when one has an infection or when they have been defiled. She denied that the absence of discharge meant that the complainant had not been defiled. She explained that the hymen not being intact means that the person is not a virgin.
37. When the appellant showed the witness a medical report dated 13.03.2022, she stated that it did not emanate from their office and added that the complainant had been attended to at another facility on 13-03-2022 and later in their facility on 17-03-2022.

The defence case

38. In his defence, the appellant stated that he worked as a manager of clubs. He stated that on 13-03-2022 he was at his work place reconciling accounts in a club called corner club and there were customers and other employees. A police officer known as Pato who was known to him came and told him that he had been sent to pick him. He left keys with one Wycliffe a co-worker and went with the police officer to Witeithie police station.
39. At the station, the duty officer slapped him asking where he had taken the complainant to and he was placed in the cells for 2 hours. The police officers showed him clothes and asked him where they were and he told them that he did not know where they had gotten them from. He claimed that they beat him up. The appellant added that later, the investigating officer, another police officer and the complainant's mother came without the complainant.
40. He added that in December 2021, the complainant's mother with other people including PW3 came to where he was staying complaining that he had been at her place and they differed. He claimed that PW2 told him that 3 weeks would not pass before his arrest. They told him that the complainant was at his place which he denied and that is when the grudge started. The appellant stated further that the charges were fabricated because of the grudge. He admitted that he had called PW2 a prostitute when they went to his place.
41. At the time of the arrest, he was staying at a room at the club and that when Pato came, he did not go to his room. He stated that he had never been at the complainant's mother's place. He used to work with



PW3 who was a friend to the complainant's mother and the complainant used to come to see him at the work place. That is how he got to know her although they used not to speak much. The appellant also claimed that he did not know there was competition at our work place between him and PW3.

Analysis and determination

42. It is well settled that the ingredients of the offence of defilement are the age of the child, identification of the perpetrator and penetration. Having read the submissions of the appellant dated 20-05-2025, it is clear to me that the identification of the appellant is not contested. The appellant admits that he was known to the complainant and her mother and identification by recognition was accurate. What the appellant contests is the age of the child and penetration.
43. The appellant has submitted that there was no conclusive and sufficient proof of age. According to him, the complainant, her mother and the doctor gave contradicting testimonies of the age with the complainant speaking of 16 years, the P3 form stating 15 years, the PRC form indicating 235 years and the complainant's mother talking of 16 years. A copy of the birth certificate produced as exhibit 3 shows that the complainant was born on 29-01-2006 while the offence was committed on 10-03-2022. Simple calculation shows that at the date of the alleged offence, the complainant had turned 16 some two months earlier. The appellant claims that the birth certificate is not reliable because it was a copy which was not certified. The certificate was produced without objection from the appellant and as such he cannot bring the issue of admissibility at the appeal stage.
44. It is true that the PRC form indicates 235 years which beats all possibilities and no one can tell what was going on in the mind of the author when she indicated the same. To me, all that matters is for the prosecution to establish that the victim of the act was a child. A child is defined to be any person who is below the age of 18. The categorization of the ages under subsections 2, 3 and 4 of the [Sexual Offences Act](#) becomes relevant when it comes to sentencing.
45. The appellant in his submissions seems to say that there was difference in the testimony on ages but does not challenge the fact that the complainant was under 18 years. In my opinion therefore, whether the complainant was 15 or 16 is not relevant to the conviction as the end result is the same, that the complainant was a child. The difference would be in sentencing. If the complainant was 15, the appellant would have been liable for imprisonment for 20 years but he was handed the less severe sentence of fifteen years, and as such there was no prejudice on his part. In that case, nothing turns on this argument.
46. On penetration, the appellant has argued that the evidence was not conclusive. According to him, which is the correct position, absence of hymen or evidence of broken hymen does not necessarily prove that he penetrated the complainant. It could as well have been by someone else or broken otherwise than through sex. However, he misses the point by arguing that the trial court relied on the evidence that the complainant's hymen was broken to convict him. The evidence was just one of the elements of proof such that if the hymen was intact, the testimony of the complainant about penetration would have been negated.
47. In my analysis, it is clear from the testimony of the complainant and her mother that she went missing for two days. It is on record that, the appellant had been visiting the complainant's home in the absence of her mother. The complainant's narration on how the appellant lured her into his house and stayed with her for two days was consistent. The trial court had the advantage of observing the complainant's demeanour and it was better placed to gauge the truthfulness of her testimony than this court and in the circumstances, I must give allowance for that as my judgment would be limited to the recorded proceedings. Section 124 of the [Evidence Act](#) permits a court to convict an accused person on evidence



of a single witness as long it is convinced that the witness is telling the truth. The trial court was so convinced and I have no reasons to doubt that.

48. The appellant has argued that the court failed to consider that there was animosity between him and the complainant's mother and that the case was framed against him. He claims that this was manifested in previous exchanges between the appellant and the mother where he is alleged to have called her a prostitute. This was after the mother was informed by a neighbour that the appellant used to visit her home in her absence. He also claims that PW3 was his competitor in their place of work and he suggests that the two teamed up to frame the case. I don't see how such a simple exchange would grow into an animosity to an extent of the complainant framing the appellant for such a serious offence neither is there evidence that PW3 had a grudge against the appellant. The complainant is not the one who argued with the appellant neither was the mother the one who came up with the story of the appellant having defiled the complainant.
49. The appellant has also claimed that the complainant's evidence was inconsistent in that she changed her statement after she was beaten up by the police. I have gone through the evidence of the complainant and the few contradictions I see do not create any doubt in my mind about her sincerity and recollection of the events. It is not every contradiction that must result to an acquittal. For contradictions to result to an acquittal, they must be material and touching on the core of the evidence that is incriminating to the accuse person. The court must weigh the relevance of the testimony where the contradictions are found and establish whether they create a reasonable doubt as to the culpability of the accused person. In *Erick Onyango Ondeng v Republic* [2014] KECA 523 (KLR), the Court of Appeal held that;

‘ The hearing before the trial court invariably entails consideration of often contradictory, inconsistent and hotly contested facts. The primary duty of the trial court is to carefully analyse that contradictory evidence and determine which version of the evidence, on the basis of judicial reason, it prefers. It is the trial court, when it comes to questions of fact, which has the singular advantage of seeing and hearing the live witness testify and being subjected to cross-examination, that time-honoured devise for testing the truth or correctness of evidence. Next is the first appellate court which by law, it is its bounden duty to re-consider, re-evaluate and analyse the evidence that was before the trial court, to determine whether, on the basis of those facts, the decision of the trial court is justified.’

50. Human beings are not expected to remember or recollect events in the same words at every time they recount. Words can change without creating a doubt as to what the witness intends to convey to the court and choice of words should not be exploited to defeat a good cause or frustrate justice unless their meaning is material in nature. I therefore reject the appellant's submissions that the alleged contradictions should be a ground for allowing this appeal. I seek persuasion in holding of Honourable Justice Joel Ngugi (as he then was) in *Titus Frank Oloo v Republic* [2020] KEHC 5433 (KLR) where he held as follows;

‘ Not every inconsistency however infinitesimal introduces reasonable doubt to the Prosecution case.’

51. The fact that the complainant lied in the first statement to the police which she admitted in court does not negate her testimony. She may have lied to the police but the court should be concerned with the truth of the matter. There is no evidence that the complainant was forced to record either of the two statements or threatened or intimidated into testifying in court.
52. In conclusion, I find no merits in this appeal and the same is hereby dismissed.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.



B.M. MUSYOKI

JUDGE OF THE HIGH COURT .

Judgment delivered in presence of the appellant online from Kamiti Maximum Prison and Miss Torosi for the respondent.

