



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oketch v Republic (Criminal Appeal E001 of 2022)  
[2026] KEHC 2408 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E001 OF 2022  
KW KIARIE, J  
FEBRUARY 27, 2026**

**BETWEEN**

**VICTOR ODONGO OKETCH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O. Case No. E038 of 2021 of the Chief Magistrate's Court at Migori by Hon. H. Maritim, Resident Magistrate)*

**JUDGMENT**

1. Victor Odongo Oketch, 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 diverse dates between January 2020 and March 2021, at [Particulars Withheld], Suna West Sub-County within Migori County, intentionally and unlawfully caused his penis to penetrate the vagina of M.T.O., a child aged fifteen 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 trial court erred in both law and fact by not complying with Article 50(2) (g)(h) of the Kenyan Constitution 2010.
  - b. The trial court erred in both law and fact by not considering that the ingredients of the offence herein were not proved to the required standard in the law.
4. The respondent 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. The appellant contended that Article 50 (2) (g) and (h) of *the Constitution* of Kenya were not complied with. The Article provides:

Every accused person has the right to a fair trial, which includes the right—

(g) to choose and be represented by an advocate, and to be informed of this right promptly;

(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

7. Although the appellant contended that the trial court failed to comply with this Article, the record displaces this contention. Before the plea was taken, the appellant was informed of his right to be represented by an advocate. The court was informed in the presence of the appellant that he had been supplied with copies of statements and the P3 form. He did not raise any issue about it. This ground, therefore, lacks merit.

8. In order 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.

9. M.W.M (PW1) testified that she was fifteen years old. A copy of her birth certificate states that she was born on 10<sup>th</sup> May 2006. As of January 2020, she was 14 years and seven months old.

10. M.T.O. (PW1), the complainant, narrated to the court about her sexual relationship with the appellant, which started in March 2020. Her parents intervened several times, but they kept their relationship. The seriousness of the matter dawned on her when she became pregnant.

11. This relationship was common knowledge not only to the parents of the complainant but also to the wife of the appellant. This came from the evidence of E.A.T. (PW3), the complainant's mother. She testified that the appellant's wife informed her of the relationship in December 2020.

12. Moindi Julius Magati (PW5), a clinical officer at Migori County Referral Hospital, examined the complainant on June 3, 2021. He noted her hymen was broken and she was 24 weeks pregnant, concluding she had been defiled.



13. Victor Odongo Oketch, the appellant, stated that the complainant was his customer in the boda-boda service business. He said he liked her and fell in love with her, and that they agreed to be lovers. He also admitted to being the father of the complainant's child, confirming that he had a sexual relationship with her.
14. Apparently, their relationship was consensual, but the complainant lacked capacity to consent. The prosecution therefore proved its case to the required standard. The appeal lacks merit and is accordingly dismissed.

**DELIVERED AND SIGNED AT MIGORI, THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**

