



REPUBLIC OF KENYA



**Tai v Republic (Criminal Appeal E051 of 2024)
[2026] KEHC 2868 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2868 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E051 OF 2024
TW CHERERE, J
FEBRUARY 19, 2026**

BETWEEN

VINCENT MOMANYI TAI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from conviction and sentence in Nyamira MCSO
E051 of 2024 by Hon. W.C.Waswa(SRM) on 07th September 2022)*

JUDGMENT

1. The Appellant, Vincent Momanyi Tai, was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the charge were that on 28th December 2020 in Nyamira County, he intentionally and unlawfully caused his genital organ to penetrate the vagina of SN, a child aged 10 years. In the alternative, he was charged with using his penis to touch the vagina of SN contrary to section 11(1) of the *Sexual Offences Act*.
2. Upon full trial, the learned trial magistrate convicted the Appellant on the main charge and sentenced him to twenty (20) years' imprisonment.
3. Dissatisfied with both conviction and sentence, the Appellant lodged the present appeal.
4. This being a first appeal, this Court is required to re-evaluate the entire evidence afresh and draw its own independent conclusions while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify. (See *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123.)
5. The prosecution called four witnesses in support of its case. PW1, the complainant, was a minor aged 10 years at the time of her testimony. A *voire dire* examination was conducted and the trial court found that she possessed sufficient intelligence and understood the duty to tell the truth, and she was accordingly permitted to testify. She stated that on 28th December 2020 at about 2.00 p.m., while



- playing with her friend Faith, the Appellant called her and requested that she escort him to his house. She went with him together with Faith. Upon reaching the house, Faith was given a phone to play with while the Appellant led PW1 into the bedroom.
6. Complainant stated that once inside the bedroom, the Appellant placed her on the bed and lay on top of her. She was clear that the incident occurred on the bed. She stated that although she did not feel pain at the time, it was the first time such an act had happened to her. She further told the court that she later went home and returned to play before finally going home in the evening. She added that the Appellant warned her not to disclose the incident and threatened to kill her if she told anyone what had occurred.
 7. PW2, Justice Geke, a Clinical Officer, testified that on 29th December 2020 the complainant was brought to the health facility with a history of defilement. Upon examination, he noted blood stains on the genital area, epithelial cells and findings consistent with penetration. He filled the P3 form, PRC form and treatment notes which were produced as exhibits.
 8. PW3, the complainant's grandmother, testified that on the evening of 28th December 2020 she noticed that the complainant was not walking properly. Upon removing her clothes, she observed blood stains on her undergarment. The complainant informed her that the Appellant had done "bad manners" to her. PW3 took her to hospital and later reported the matter to the police.
 9. PW4, Sgt Chepkorir Langat, testified that investigations in this case had initially been conducted by another officer. She confirmed that the complainant was reported to have been defiled and that statements were recorded before the matter was forwarded for prosecution.
 10. Upon being placed on his defence, the Appellant elected to give a sworn statement. He denied committing the offence and stated that the allegations against him were false. He testified that he knew the complainant and her family as neighbours. However, he maintained that he had not defiled her and that he had been wrongly accused.
 11. The Appellant further claimed that there existed differences between his mother and the complainant's mother. According to him, the strained relationship between the two families formed the basis of the false accusation against him.
 12. In his written submissions dated 19th January 2026, the Appellant reiterated his position and challenged the conviction on several grounds, including inconsistencies in the complainant's names, alleged contradictions in the evidence, insufficiency of medical proof, and deficiencies in investigations.
 13. First, the Appellant challenged the identity of the complainant on the basis of inconsistencies in her names as reflected in various documents. He pointed out that the PRC form bore the name SNN Sharon, the birth certificate reflected SKN, while the charge sheet referred to SN. He argued that these variations created doubt as to whether the same child was the subject of the proceedings and whether the charge had been framed in good faith.
 14. Second, he attacked the credibility of Complainant's testimony. He submitted that her evidence was internally contradictory, particularly regarding where the incident occurred. He contended that at one point reference was made to the bed and elsewhere to the floor, and he questioned whether Faith remained in the bedroom or was in the sitting room. In his view, these inconsistencies rendered the account unreliable.
 15. Third, the Appellant questioned the plausibility of the complainant's conduct following the alleged incident. He emphasized that PW1 stated she did not feel pain and that she continued playing until



- evening. He argued that such conduct was inconsistent with the allegation of defilement and cast doubt on whether penetration or injury had occurred.
16. Fourth, he challenged the medical evidence. He argued that although it was alleged that the complainant's undergarment had blood stains, the garment was not produced as an exhibit in court. He further contended that no forensic or DNA analysis was undertaken to establish the source of the blood and pointed to what he perceived as inconsistencies in the dates relating to examination and reporting.
 17. Fifth, the Appellant took issue with the evidence of PW3 and the manner in which investigations were conducted. He questioned whether there was clear evidence of disclosure to PW3 and argued that PW4 admitted she did not personally conduct the investigations, that the officer who allegedly recorded statements did not testify, and that key details such as the OB number were not produced. He maintained that these deficiencies undermined the integrity of the prosecution case.
 18. The Respondent filed written submissions dated 10th March 2025 opposing the appeal. It was submitted that the prosecution proved all the essential ingredients of the offence of defilement beyond reasonable doubt, namely proof of age, proof of penetration and positive identification of the assailant.
 19. On age, the Respondent relied on the birth certificate produced in evidence, which showed that the complainant was born on 10th March 2010. It was submitted that as at 28th December 2020 she was 10 years old and therefore fell within the category of a child aged eleven years or less.
 20. On penetration, the Respondent relied on the testimony of PW1 and the medical findings of PW2, who observed blood stains and epithelial cells consistent with penetration. It was argued that the medical evidence corroborated the complainant's account.
 21. On identification, the Respondent submitted that this was a case of recognition. The complainant knew the Appellant as a neighbour, the incident occurred during the day, and she immediately named him to PW3. It was contended that there was no possibility of mistaken identity.
 22. The Respondent further submitted that the alleged inconsistencies were minor and did not go to the root of the charge. The Court was urged to find that the prosecution case was proved beyond reasonable doubt and to dismiss the appeal in its entirety.
 23. This being a first appeal, this Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own independent conclusions, while bearing in mind that it did not see or hear the witnesses testify and making due allowance for that fact.
 24. From the record of appeal and the submissions by the parties, the issues arising for determination are whether the prosecution proved the essential ingredients of the offence of defilement beyond reasonable doubt; whether the inconsistencies in the complainant's names rendered the charge defective or created doubt as to her identity; whether the alleged contradictions in PW1's testimony affected her credibility; whether the complainant's conduct after the alleged incident undermined proof of penetration; whether the medical evidence was sufficient and reliable; whether the evidence of PW3 was credible; and whether the investigations were so defective as to occasion a miscarriage of justice.
 25. The offence of defilement requires proof of three essential elements: the age of the complainant, proof of penetration, and proof of the identity of the perpetrator. The burden of proof rests upon the prosecution to establish each of these elements beyond reasonable doubt.



26. On the issue of age, the birth certificate produced in evidence shows that the complainant was born on 10th March 2010. The offence is alleged to have occurred on 28th December 2020. She was therefore 10 years old at the time of the offence. I am satisfied that the prosecution proved the age of the complainant beyond reasonable doubt.
27. On penetration, PW1 testified that the Appellant placed her on the bed and lay on top of her. Her evidence was clear that the incident occurred in the bedroom. Although she stated that she did not feel pain at the time, that alone does not negate the occurrence of penetration.
28. PW2 examined the complainant on 29th December 2020 and observed blood stains on the genital area as well as epithelial cells consistent with penetration. The P3 form, PRC form and treatment notes were produced in evidence. The findings were therefore grounded on physical examination and not merely on the history given. The Appellant contended that no forensic or DNA analysis was undertaken to establish the source of the blood and further pointed to what he perceived as inconsistencies in the dates of examination and reporting.
29. However, in *Geoffrey Mwendwa Munyasia v Republic* [2015] eKLR, the Court of Appeal held that while DNA evidence may be desirable, it is not mandatory where there exists other cogent medical and circumstantial evidence establishing penetration. In the present case, the clinical findings corroborated PW1's account and were not shaken on cross-examination and I am therefore satisfied that penetration was proved beyond reasonable doubt even in the absence of DNA analysis.
30. On identification, the complainant knew the Appellant as a neighbour. The incident occurred during the day and in circumstances that did not suggest any difficulty in recognition. She promptly informed PW3 that the Appellant had done "bad manners" to her. I am satisfied that the identity of the Appellant as the perpetrator was established beyond reasonable doubt.
31. Concerning the alleged inconsistencies in the complainant's names, the Appellant argued that the variations appearing in the PRC form, birth certificate and charge sheet created doubt as to whether the same child was the subject of the proceedings. Upon perusal of the record, it is clear that the complainant who testified as PW1 was the same child examined by PW2 and referred to in the charge sheet. The variations relate to additional names and do not create confusion as to identity.
32. The test is whether the alleged discrepancy occasioned prejudice or misled the Appellant in the preparation of his defence. The Appellant fully participated in the trial, cross-examined all witnesses, and did not raise any objection as to the identity of the complainant at trial.
33. In *Richard Munene v Republic* [2018] eKLR, the Court of Appeal held as follows:

"As they say, the prosecution must present a watertight case that meets the threshold of beyond reasonable doubt in order to obtain a conviction. Contradictions, discrepancies and inconsistencies in evidence of a witness go to discredit that witness as being unreliable. Where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of the accused.

It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial court that an accused person will be entitled to benefit from it."



34. I therefore find that the variation in the name of the complainant did not render the charge defective nor did it occasion a miscarriage of justice.
35. On the alleged contradictions in PW1's testimony, particularly regarding whether the incident occurred on the bed or the floor and whether Faith remained in the bedroom, I find that these discrepancies are minor. The central account remained consistent: the Appellant led the complainant into his bedroom and lay on top of her. Minor inconsistencies are not uncommon, especially in the testimony of a child recounting a traumatic event.
36. The Appellant also questioned the complainant's conduct after the incident, arguing that her continued play and statement that she did not feel pain undermined proof of penetration. However, the reaction of a child to trauma is not uniform. The absence of immediate pain or dramatic reaction does not negate the medical findings or her consistent account of what occurred.
37. I therefore find that the alleged contradictions and the complainant's conduct after the incident do not create reasonable doubt as to the occurrence of the offence.
38. The Appellant further challenged the manner in which investigations were conducted. He contended that PW4 admitted she did not personally conduct the investigations and that the officer who initially recorded statements did not testify. He also argued that the OB number was not produced and that no proper scene visit was demonstrated.
39. It is trite that inadequacies in investigation do not automatically vitiate a conviction where there is otherwise sufficient evidence establishing the offence. The conviction must stand or fall on the strength of the evidence tendered before the court. In the present case, the prosecution case was founded on the direct testimony of the complainant, corroborated by medical evidence and supported by the testimony of PW3. All these witnesses testified and were subjected to cross-examination.
40. The Appellant has not demonstrated how failure to call the investigating officer prejudiced his defence or resulted in a miscarriage of justice. The fact that PW4 did not personally conduct the initial investigations does not render the evidence of other witnesses inadmissible or unreliable.
41. Having independently re-evaluated the entire evidence on record, I am satisfied that the prosecution proved all the essential ingredients of the offence of defilement beyond reasonable doubt. The conviction was therefore safe.
42. The complainant was 10 years old at the time of the offence. Pursuant to section 8(2) of the *Sexual Offences Act*, where the child is aged eleven years or below, the prescribed sentence upon conviction is life imprisonment. The sentence of twenty (20) years' imprisonment imposed by the trial court was therefore not in conformity with the mandatory statutory minimum.
43. It is, however, noted that the State did not lodge a cross-appeal seeking enhancement of sentence. Moreover, this Court is constrained by section 354(3)(ii) of the Criminal Procedure Code, which prohibits enhancement of sentence unless the appellant has been given prior notice of the intention to do so. No such notice having been issued; the sentence cannot be enhanced in the present appeal.
44. In the result, the appeal against conviction is dismissed. The appeal against sentence is also dismissed. The conviction and sentence imposed by the trial court are hereby upheld.

DELIVERED AT NYAMIRA THIS 19TH DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE



Appearances

Court Assistant - Anita

Accused - Present in person

For the DPP - Mr. Chirchir (SADPP)

