



**Ondieki v Republic (Criminal Appeal E091 of 2024)
[2026] KEHC 3618 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL APPEAL E091 OF 2024**

**JM NANG'EA, J
MARCH 12, 2026**

BETWEEN

RONALD OTAO ONDIEKI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of the Chief Magistrate's Court at Nakuru (Hon. E.S Soita-SRM) delivered on 6th November 2024, and sentence thereafter pronounced)

JUDGMENT

1. The Appellant is dissatisfied with the said judgement of the above stated lower court before which he was charged with a main offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* No. 3 of 2006. In the alternative the Appellant was charged with committing an indecent act with a child contrary to Section 11(1) of the same Act.
2. The particulars of the main charge are that on diverse dates between 15th December 2022 and 11th January 2022 at [Particulars Withheld], Nakuru East Sub County of Nakuru County (sic), the Appellant intentionally caused his penis to penetrate the vagina of A.A, a child aged 17 (seventeen) years. It is alleged in relation to the alternative charge that in the same period and at the same place he intentionally and unlawfully touched the child's vagina using his penis.
3. The Appellant refuted the charges.
4. After a full hearing, the trial court appears to have convicted the Appellant of the main charge of defilement pursuant to Section 215 of the Criminal Procedure Code and sentenced him to 15 (fifteen) years imprisonment. The Judgement is silent on the alternative charge.
5. The Grounds of Appeal as per undated Grounds of Appeal filed on 18th November 2024 may be condensed into 3 as follows:



- a. That the learned trial magistrate erred in law and fact by failing to find that the ingredients of the offences charged including penetration were not established;
 - b. That the learned trial Magistrate erred in law and fact by convicting the Appellant on the basis of contradictory prosecution evidence;
And;
 - c. That the learned trial magistrate generally erred in law and fact by convicting the Appellant against the weight of the evidence.
6. The Appellant prays for his conviction to be quashed and sentence set aside.

Evidence of the Parties before the trial court.

7. The alleged victim (“the Complainant”) testified on oath that on 15/12/2022 her Aunt (PW2) sent her to the local shops to purchase milk. She appears to have met the Appellant she knew as Erick who carried her on his motorcycle to his home. The Complainant stated that the Appellant’s house was a single room with two plastic chairs and a bed. The Appellant allegedly asked her to remove her clothes before he lay on her. They had sexual intercourse during which the Appellant penetrated her using his penis twice. The Complainant was thereafter released to go.
8. The Complainant further told the trial court that on 9th January 2023 she again met with the Appellant while she was going to school. He again took her to his home where they engaged in sexual intercourse. She never revealed the acts to anyone.
9. On 11/3/2023 the Appellant is again said to have found the Complainant at a motorcycles stage and this time he took her into a bush where they repeated the same act on a “green Maasai sheet”. She added that the Appellant would regularly ride her to school during which they had sexual intercourse on occasion.
10. Later while in school, the Complainant said she lost Kshs. 3,000 PW2 had given her to pay to the school as her fees. Her Aunt beat her up over the loss and upon removing her sweater, she suspected that she was pregnant. The Complainant disclosed that the Appellant was responsible for the pregnancy and he was arrested at the motorcycles stage. She denied having had sexual intercourse with anyone else. The Appellant was her boyfriend, the Complainant adds. The Complainant further told the court that she was born on 6th November 2006 as per copy of her Certificate of Birth she exhibited.
11. PW2 confirmed the Complainant’s evidence saying that she stayed with her. The witness stated that on 29/5/2023 the Complainant was sent away for school fees. She gave her cash for payment of the fees and required her to avail a receipt as evidence of payment. The Complainant failed to surrender a receipt even after allegedly paying the fees. She was angry and beat her up for the indiscretion. When PW2 removed the Complainant’s blouse, she noticed that her stomach was unusually big and suspected that she was pregnant. The Complainant was taken to Nairobi Women’s Hospital for a pregnancy test that confirmed the pregnancy. The girl revealed the man responsible as a motorcycle rider who usually carried her to school. She led PW2 and others to identify the suspect at a motorcycles stage. The Complainant pointed at the Appellant as the culprit after which members of the public arrested and handed him to the police. PW2 recalled seeing the Appellant once before and that he was commonly called “Mapengo” at the local motorcycles stage.
12. PW3, a Doctor at Nairobi Women’s Hospital, confirmed that the Complainant was attended to at the Hospital on 3/6/2023. The girl was 24 weeks pregnant. Her hymen was broken but there were no



other abnormalities noted. Her Medical Examination Form, popularly known as P3 form, and Post Rape Care (PRC) form were filled out and tendered in evidence before the trial court.

13. PW4 was the case Investigating Officer. After completing investigations, he brought the charges before the lower court, the officer knew the Appellant having previously arrested him over another sexual offences case in which he was not the investigating officer.

The Defence Evidence

14. The Appellant gave sworn evidence in his defence, telling the Court that he was a “boda boda:” rider based at [Particulars Withheld]. While agreeing that he regularly transported the Complainant on his motorcycle, he denied engaging in sexual activity with her. According to him the Complainant named One Erick Otieno as the person responsible for her pregnancy. He thought that only DNA analysis could establish the person responsible for the pregnancy.
15. It would appear that during defence hearing the Appellant sought to have necessary samples taken for DNA analysis to establish who caused the Complainant’s pregnancy. That was not eventually done, since the Complainant could not be found for the purpose as per the record.

Analysis and Determination

16. It is trite law that a first appellate court has the duty of re-assessing or re-evaluating the evidence presented before the trial court and arrive at its own conclusions on both matters of fact and law while being mindful of the fact that unlike the lower court it did not have the advantage of watching the demeanour of witnesses {(see the case of Okeno vs Republic (1972) EA 32}.
17. Both parties filed written submissions which I have perused against the record. I will consider all the grounds of appeal together. It is indisputable based on the complainant’s Birth Certificate produced in evidence and PW 2’s oral evidence that the Complainant was 17 (seventeen) at the material time. A Birth Certificate is reliable proof of age of a person.
18. The proviso to section 124 of the *Evidence Act* dispenses with the requirement for corroboration of the evidence of a child in sexual offences cases where the child is a victim, if the court is satisfied that the child has spoke the truth implicating the accused person. The case of JWA vs Republic (2014) eKLR among many other judicial determinations has reiterated this position.
19. Section 143 of the *Evidence Act* further provides;

“no particular number of witnesses are required to prove any given fact”.

Indeed evidence is not counted but rather it is weighed . Even the evidence of one witness may be sufficient to prove a fact if the evidence is credible (see case law in Benjamin Mbugua Gitau eKLR vs Republic (2011).

Determination

20. The issue for determination is whether the prosecution established all the ingredients of defilement under the *Sexual Offences Act* and discharged its burden of proof of the charge beyond reasonable doubt. Based on the Complainant’s Birth Certificate showing her undisputed date of birth as 6/11/2006, she was 17 years old or thereabouts as at the time of the alleged defilement. She was therefore a minor capable of being defiled in law.
21. Regarding the allegation of penetration of her vagina, her evidence is corroborated by the pregnancy as confirmed by medical examination. The fact does not appear to be disputed by the Appellant.



22. The main point for determination is whether the Appellant was identified or recognized as the offender. The Complainant is the only identifying witness. She gave detailed evidence describing various dates on which the Appellant defiled her.
23. Whether or not her pregnancy was caused by the Appellant, I am satisfied that she spoke the truth implicating the Appellant as the man who had sexual intercourse with her in the material period. The matter took long to be reported because of late discovery of the Complainant's pregnancy by PW2. Contrary to the Appellant's claim that he is not called Erick, he signed off his submissions dated 12th September 2024 in the lower court in the name as "Eric Otao".
24. All the grounds of appeal therefore fail. The upshot is that the appeal is dismissed.

JUDGEMENT DATED, SIGNED AND DELIVERED IN PHYSICAL COURT AT NAKURU THIS 12TH DAY OF MARCH, 2026.

J. M. NANG'EA - JUDGE

In the presence of:

The Prosecution Counsel, Mr Wakasyaka

The Appellant's Advocate, Mr Omwanza

The Appellant.

The Court Assistant (Jeniffer).

