



REPUBLIC OF KENYA



**Ruto v Republic (Criminal Appeal E001 of 2025)
[2026] KEHC 4177 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL APPEAL E001 OF 2025
RB NGETICH, J
MARCH 12, 2026**

BETWEEN

KIMOSOP RUTO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal on conviction and sentence in criminal case number S/
O 004 OF 2023 where the appellant was sentenced to serve a 20 Years by Hon.
Mulochi (P.M) at CM's court Kabarnet that was delivered December-2024)*

JUDGMENT

1. 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* No.3 of 2006.particulars of the charge were that on the 1st day of June 2023 at [Particulars withheld] Village, Koitilion Sub-Loction, Ewalesoi location in Baringo south subcounty within Baringo county, being a male person, he intentionally caused his penis to penetrate the vagina of M.K ,a child aged 12 years.
2. Upon close for trial, the appellant was convicted and sentenced to serve 20 years imprisonment for the offence of defilement. Being aggrieved by the judgement of the trial court, the Appellant has appealed to this court on the following grounds as raised in the Petition of appeal:-
 - a. That the learned trial magistrate erred in matters of law and fact by failing to note that the prosecution side failed to prove their case beyond reasonable doubt as required by law in the *evidence act* section 107 of laws of Kenya.
 - b. That, the learned trial magistrate erred in matters of law and fact by not making a finding that the credibility of the complainant and her mother were put into question as the case took longer before the case was reported. Besides, they never revealed the kind of relationship that existed between them and the appellant. They lied under oath.



- c. That, the trial court magistrate erred in matters of law and fact when he failed to warn himself against convicting the appellant on the uncorroborated evidence of the complainant whom it was claimed was being treated for ulcers and not injuries sustained after the incident. The witnesses were all indicating they were told what they testified on. The mother said she took PW1 to hospital the next day 2nd but knew about the case from other sources many days later.
- d. That the trial magistrate erred in law by misapplying it to an unsubstantiated claim that the appellant committed an act of Defilement on the complainant while on the contrary the ingredients of the alleged offence were not properly established on age and penetration. The conviction was based on suspicion, fabrication and not on evidence, in other words I was framed for offering resistance for sale of our family land to educate the complainant and her siblings.
- e. That, the learned trial magistrate erred in matters of law and fact by shifting the burden of prove to the appellant when she indicated that the appellant did not offer his defence earlier during the cross examination of the prosecution witness PW 3 (mother) c/sec 107 of the *evidence act*.
- f. That, the trial court magistrate erred in matters of law and fact in not giving adequate consideration to the appellant's general defense and alibi defence c/section 169 of the criminal procedure code.
- g. That, the trial court magistrate erred in matters of law and fact by not applying the sentencing principles such as mitigation, fairness before imposing a sentence of twenty years imprisonment making my sentence to be wrong in principle.
- h. That, the trial magistrate erred in law and fact by convicting and sentencing the appellant using a copy of birth certificate that had not been certified by the maker of the document contrary to section 66 of the *evidence act* on permitting secondary evidence for the inspection of the court to prove a fact.
- i. That, the trial magistrate erred in law and fact by convicting and sentencing the appellant based on a defective charge sheet as the particulars did not match the evidence on record for instance the age on the birth certificate was at variance with the particularization of the charge sheet.
- j. That, the trial magistrate erred in law and fact by convicting and sentencing the appellant based on extraneous issues/court introduced new evidence for instance the medical doctor indicated penetration was by a sharp object which could be attributed to other objects than penis, but he altered the medical doctor's testimony in his judgement to blunt object. This violated my right to a fair trial u/ s 50 (1) on partiality and fairness when he became biased.
- k. That, the trial magistrate erred in law and fact by using a questioned document in terms of authenticity and content. The age indicated by the parent was 12 years, the complainant stated that she was 12 years and about to turn 13 years. The questioned birth certificate said she was 11 years and 2 months. This disparity raised doubt on the actual age of the complainant. The element of age was not properly established.
- l. That, the trial court magistrate erred in both law and fact by relying on contradictory and inconsistent evidence to convict him moreso on the testimony of the medical doctor who self-contradicted herself on the type of object that caused penetration, while the mother informed the court that she took pw1 to hospital on 2/6/2023 with a medical note dated 7-05-2023.



- m. That, the delay that took place between the alleged defilement and the examination of the complainant could not have been possible to recover any medical evidence that would sustain the charge the appellant was facing. The alleged incident took place on 14/06/2023 examination date 14th/06/2023. 14.-THAT, the trial magistrate erred in law by not complying with its obligatory duty under section 333 (2) the criminal procedure code that required him remand custody while undergoing trial for 18 months take into account the period appellant spent in custody pending trial.
3. The appellant prays may the Honorable court be pleased to allow the appeal the conviction, set aside the sentence and set me at Liberty.

Appellant's Submissions

4. The Appellant through his advocates on record filed written submissions and submitted that the court's duty is to assess the evidence tendered in the lower court and come to its own conclusion on the trial and verdict reached as was said in *Pandya V Republic (1957) EA 336* and additionally, in *Okeno V Republic (1972) EA 32* where the court held that the first appellate court must itself weigh conflicting evidence and draw its own conclusion.
5. That in obedience to the foregoing, the Appellant invites the court to assess and consider the evidence, both testimonial and material, in the primary case and can only come to one conclusion: that the conviction of the appellant is untenable. They point on only a few of the flaws and outright discrepancies in the evidence.
6. That first off, the complainant being a minor, extra care had to be taken to not only establish that she was aware of the importance of telling the truth, but the court too had to satisfy itself that she did actually tell the truth and place that on record. That Section 124 of the *Evidence Act*, while makes proviso to the general rule that no accused person shall be convicted for uncorroborated evidence of the victim. They submit that in the instant case, the trial magistrate did not record any such reasons for believing that the minor told the truth.
7. That the evidence of the other witnesses also contradicted and did not corroborate the evidence of the complainant. For instance, on the issue of dates and days, the offence is alleged to have been committed on 1st June, 2023 which according to that year was on a Thursday. That the complainant states that she went to school on the next day, the Friday and then went to her mother's where she got so sick that her mother took her to the hospital the next day, which would be the Saturday.
8. They submit that the mother PW3, however says that she took the complainant to hospital on the 7th of June, the Tuesday of the following week.
9. They submit further that the evidence of PW2 is equally contradictory and it suffices to say; the two witnesses did not corroborate the complainant's evidence.
10. That the evidence of PW1(the complainant) and PW3 also do not bear out the allegation of sexual assault as they both affirm that when the complainant was first taken to hospital, the examination revealed that she was suffering from ulcers. That the sexual assault angle only came out much later which was even confirmed by PW2. That it is interesting that she found a special meal being prepared for the complainant in school and this somehow suggested to her that the complainant was suffering from nothing other than ulcers.
11. The appellants submits that the evidence of PW4, both oral and material, contend that the complainant's hymen appeared to have been torn by a sharp object and a penis in any way cannot be



described as sharp, yet the magistrate in his judgement totally ignored this incongruity and put it upon himself to amend the evidence from "sharp object" to "blunt object".

12. That in any case, the trial court based its conviction of the appellant on the absence of a hymen. Precedents have ruled against this being the case of PKW V R (2012) eKLR, and the case of Wachera v Republic (Cr. Appeal No E008 of 2023 (2025) KEHC 11843 (KLR), where Magare J. stated:

“It is incumbent upon the prosecution to prove beyond reasonable doubt that the complainant’s hymen was torn as a result of an act of defilement committed by the Appellant. Further, the state needs to prove that even notwithstanding, issues related to hymen, they can independently prove there was penetration.

13. That the clear import of the above is that there can be no assumption of penetration simply because there is no hymen. And as penetration is essential in a case of defilement, the prosecution ought to have proved that it indeed occurred and having failed to, the court was wrong to convict the Appellant.
14. They submit that the trial court also failed to give credit to the Appellant’s alibi, brusquely waving it off as having not been raised in the Appellant’s cross-examination of the prosecution witnesses which accordingly was erroneous. They argue that the trial magistrate should have afforded the prosecution opportunity to rebut the Appellant’s defense of alibi, once he raised it. They place reliance in the case of Erick Otieno Meda v Republic (2019) KEHC 4959 (KLR). They submit that a defence of alibi does not place a burden of proof on the accused to prove it and rely in the case of Mwendwa Mulinge v Republic (2014) KECA 710 (KLR), where it was held that the burden of proving the falsity if at all, of an accused’s alibi lies on the prosecution. That the prosecution having failed to dispute the Appellant’s alibi, no conviction should have stood and in sum, they urge this court to find that the Appellant was convicted in error.

Analysis and Determination

15. This being a first appeal, this Court is obliged to reconsider and re-evaluate the evidence afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses testify. This duty is settled in Okeno v Republic (1972) EA 32 and Pandya v Republic (1957) EA 336.
16. In view of the above, I have considered evidence adduced before the trial court and wish to consider whether the following issues
 - a. Whether ingredients for defilement were proved beyond reasonable doubt
 - b. Credibility of the complainant
 - c. Whether there is inconsistency
 - d. Defence of alibi
 - e. Whether sentence imposed is harsh and excessive

(i) Proof of age

17. Age is a critical ingredient of the offence of defilement under section 8 of the *Sexual Offences Act*. The prosecution proved age through the testimony of PW1 and PW3, both of whom stated that the complainant was 12 years old and this was confirmed by a birth certificate produced by the investigating officer showing that the complainant was born on 10th April 2012. This Court therefore finds that the age of the complainant was proved beyond reasonable doubt.



(ii) Whether Penetration Was Proved

18. Penetration, as defined under section 2 of the *Sexual Offences Act*, need only be partial and may be proved by direct, medical, or circumstantial evidence. PW1 gave a clear and consistent account that the appellant inserted his penis into her vagina, causing pain and bleeding.
19. The medical evidence by PW4 confirmed a broken hymen, foul-smelling vaginal discharge; and a history of sexual assault occurring approximately two weeks prior to examination.
20. While the clinical officer described the object causing penetration as “sharp”, the substance of the evidence established vaginal penetration. Medical evidence is corroborative in nature and need not mirror the complainant’s account in every detail. The Court of Appeal has consistently held that absence of spermatozoa or delayed examination does not negate penetration (*Cassim Ali v Republic* [2015] eKLR). There is no doubt that penetration was proved beyond reasonable doubt.

(iii) Identification of assailant

21. The appellant was known to the complainant as a neighbor, eliminating any possibility of mistaken identity.

(iv) Credibility of the Complainant and Section 124 of the *Evidence Act*

22. The complainant was subjected to a *voire dire* examination, and the trial court expressly found that she understood the importance of telling the truth and was competent to testify on oath. Under the proviso to section 124 of the *Evidence Act*, a court may convict on the uncorroborated evidence of a child victim if it records reasons for believing that the complainant is telling the truth. From the record, the trial court observed the demeanor of the complainant, found her testimony consistent and credible and Considered her evidence alongside medical and surrounding circumstances. from the foregoing, I see no reason to interfere with that finding. Appellate courts are slow to disturb findings on credibility unless they are plainly unreasonable (*Kiilu & Another v Republic* [2005] 1 KLR 174).

(v) Alleged Contradictions and Delay in Reporting

23. The appellant raised issues relating to delay in reporting and inconsistencies in dates and medical visits.
24. In sexual offence cases involving minors, delay in reporting is not uncommon and may be explained by fear, shame, or trauma. The evidence shows that the complainant first reported physical pain, which later led to disclosure of the sexual assault.
25. The discrepancies pointed out are minor and do not go to the root of the prosecution case. The law is clear that only material contradictions which occasion a miscarriage of justice warrant appellate interference (*Njuki v Republic* [2002] 1 KLR 771).

(vi) Defence of Alibi

26. The appellant raised an alibi defence claiming he was away at a construction site during the material period. However, the prosecution evidence placed the appellant at the scene, and the complainant positively identified him as the perpetrator. Where an accused is positively recognized by a victim who knew him well, an alibi is displaced (*Kiarie v Republic* [1984] KLR 739). From the foregoing, the trial court correctly rejected the alibi, and this Court finds no misdirection in that regard.



(vii) Whether sentence imposed was harsh and excessive

27. The appellant was convicted under section 8(3) of the *Sexual Offences Act* and sentenced to twenty (20) years' imprisonment. The sentence imposed is lawful and within the statutory limits. The trial court considered mitigation, and there is no basis for appellate interference. However, the trial court record should reflect consideration of section 333(2) of the Criminal Procedure Code regarding time spent in custody.
28. Final orders:-
- a. The appeal against conviction and sentence fails and is hereby dismissed.
 - b. Period served in remand to be computed in the sentence imposed by trial court.

DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF MARCH 2026.

.....

R NGETICH

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT ELDORET THIS 12TH DAY OF MARCH 2026.

.....

J.R. WANANDA

JUDGE

Court Assistant – Brian Kimati

Appellant – Present

Ms Kosgei for ODPP.

