Republic v Muhia (Sexual Offence 8 of 2020)
[2025] KEMC 294 (KLR) (26 November 2025) (Judgment)

Neutral citation: [2025] KEMC 294 (KLR)

REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

SEXUAL OFFENCE 8 OF 2020

YA SHIKANDA, SPM

NOVEMBER 26, 2025

BETWEEN

REPUBLIC .... PROSECUTION

AND

MBUVI KOMU MUHIA .... ACCUSED

JUDGMENT

1. Mbuvi Komu Muhia (hereinafter referred to as the accused person) is charged with the offence of defilement as well as an alternative charge of committing an indecent act with a child. In the main count, the accused person is charged with the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act*. The particulars of the offence are that on 10/1/2020 at Kathekakai village, Nthongoni Sub-location, Kibwezi Sub-county within Makueni County, the accused person unlawfully caused his penis to penetrate the anus of KMW (name withheld), a child aged 7 years. The accused person is alternatively charged with the offence of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the offence are that on the same day and at the same area, the accused person intentionally touched the anus of KMW aged 7 years wish his penis. When the plea was taken, the accused person pleaded not guilty to both counts. The matter was then set down for hearing.

The Evidence

The Prosecution Case

2. The prosecution case was partly heard by another Magistrate who was subsequently transferred. Upon taking directions under section 200(3) of the Criminal Procedure Code, the matter proceeded from where it had reached. The prosecution called a total of six (6) witnesses in a bid to prove its case against the accused person. PW 1 KW (name withheld and hereinafter referred to as the complainant) testified on oath after a voire dire examination was conducted by the court. His testimony was that he knew

the accused person by face but did not know his name. The witness testified that on the material day, he was with his two cousins in the bush fetching firewood. That the accused person was grazing cattle. The complainant's cousins suggested that they ran away.

3. The cousins managed to run away. A thorn pricked the complainant and as he stopped to remove it, the accused person got hold of him and stated that the land belonged to him. He removed the complainant's trouser and forced him to lie on the ground facing down. That the accused person laid on top of the complainant and gagged his mouth. He then inserted his penis into the complainant's anus. When the complainant went home, he reported to his sister and grandmother. The matter was also reported to the Nyumba kumi elder and later at Kambu police post. The complainant was taken to hospital for examination. He stated that he had seen the accused person before.

4. PW 2 Rebecca Mutua testified that she was the Village elder at Kathekakai village. That she was at home at 7:30 pm when a mother and three children arrived. The witness stated that the complainant informed her that he was fetching firewood with his cousins when a man who was grazing goats emerged and chased after them. The man caught up with the complainant after a thorn pricked him. The man then removed the complainant's clothes and inserted his penis into the complainant's anus. PW 2 stated that she examined the boy's anus and saw sperms. The matter was reported to the police and the complainant was taken to hospital. The accused person was later arrested.

5. PW 3 CN (name withheld) testified that the complainant was her grandson. That the complainant and two girls went to fetch firewood. Later, the girls went and informed PW 3 that the accused person had chased them and managed to get hold of the complainant. That the complainant appeared later and reported that the accused person had done tabia mbaya in his anus. The witness examined the complainant's anus and saw sperms. She took the child to the village elder (PW 2). That the village elder took the complainant to the area Chief then to the police post and hospital.

6. PW 4 Benjamin Mulandi Nzioka testified that he was the Assistant Chief of Mangelete Sub-location. That on 11/1/2020 at about 7:30 pm he was called on phone by the Village elder (PW 2) and informed that a child had been sodomized near Kathekakai market. The witness proceeded to where the Village elder was and found her together with the complainant and the accused person. The witness assisted in taking the accused person to Nthongoni police post. PW 5 Police Constable Enos Angote testified that he took over the matter from the initial investigating officer. Nevertheless, the witness stated that he was at Nthongoni police post when the accused person was taken there on 11/1/2020 at night. The witness booked the report and informed the officer in charge.

7. PW 5 stated that he was sent by the investigating officer to visit the scene. He found that the incident occurred in a bush. He was in the company of another police officer, the village elder and the complainant. The witness produced a copy of the complainant's certificate of birth. PW 6 Kevin Sanya Ouma testified that he was a Clinical officer at Kambu Sub-county hospital. The witness produced the PRC and P3 forms filled in respect of the complainant.

The Defence Case

8. When the accused person was placed on his defence, he opted to give a sworn testimony without calling any other witness. The accused person testified that on 13/3/2020 he returned home at about 7:30 pm and found a lot of people at his home. That the people asked him whether he was from hospital. He admitted that he was from hospital. According to the accused person, the people left but indicated that they would return the following morning. That the following morning, the people returned and asked the accused person to accompany them to Nthongoni Police post. The accused person did so and when they reached the police post, the accused person was asked to call his father. That he called

his father on phone and the latter appeared while in the company of the Assistant Chief. The Assistant Chief asked why the accused person had been arrested. That the people who had taken the accused person to the police post stated that the accused person should suffer because his parents loved him. The accused person stated that he was taken to Mtito andei police station.

Main Issues For Determination

9. Having considered the nature of the charges and the evidence on record, I find that the main issues for determination are as follows:

    a. Whether the complainant was defiled on 10/1/2020;

    b. If so, whether it was the accused person who defiled the complainant;

    c. If not, whether an indecent act was committed against the complainant on the aforementioned date;

    d. If so, whether such indecent act was committed by the accused person;

    e. Whether the prosecution has proven its case against the accused person to the required standard.

Analysis And Determination

10. I have carefully considered the evidence on record as well as the law applicable. Section 8 (1) of the *Sexual Offences Act* provides as follows:

    > " A person who commits an act which causes penetration with a child is guilty of an offence termed defilement".

    Section 2 of the *Sexual Offences Act* defines the term "penetration" as the partial or complete insertion of the genital organs of a person into the genital organs of another person. The same section refers to the definition of a child as provided for under the *Children Act*. Section 2 of the *Children Act* defines a child as an individual who has not attained the age of eighteen years. From the above provisions, I gather that the key ingredients of the offence of defilement are as follows:

    1. The accused person must have committed an act which causes the partial or complete insertion of his or another person's genital organ into the genital organ of another person or the accused person's genital organ. My understanding of the law is that it does not matter who inserts, what matters is who causes the insertion. For instance, a woman who causes a male child to insert his penis into her vagina may be guilty of defilement if all the key ingredients are satisfied. In a nutshell, the prosecution must prove penetration;

    2. The alleged victim must be below the age of eighteen years. The prosecution must prove that the alleged victim was below the age of eighteen years at the time of incident, that is, proof of age;

    3. Positive identification of the accused person. The evidence of the prosecution must show that the accused person was positively identified as the person who committed the impugned act against the child.

11. My view is buttressed by the authority of Dominic Kibet Mwareng v Republic [2013] eKLR where the High Court observed thus:

> " The critical ingredients forming the offence of defilement are; the age of the complainant, proof of penetration and positive identification of the assailant".

12. Similarly, in the case of C.W.K v Republic [2015] eKLR, Kimaru J (as he then was) held that for the prosecution to sustain the charge of defilement, the prosecution must establish penetration, the perpetrator of the offence and the age of the victim.

Age

13. The particulars of the offence indicate that the complainant was aged seven (7) years old at the time of incident. In the case of Moses Nato Raphael v Republic [2015] eKLR, the Court of Appeal pronounced itself thus:

> " On the challenge posed by the uncertainty in the complainant's age, this Court had occasion to deal with a similar issue in Tumaini Maasai Mwanya v. R, Mombasa CR.A. No. 364 of 2010, where we held that proof of age for purposes of establishing the offence of defilement which is committed when the victim is under the age of 18 years should not be confused with proof of age for purposes of appropriate punishment for the offence in respect of victims of defilement of various statutory categories of age. As long as there is evidence that the victim is below 18years, the offence of defilement will be established. The age, which is actually the apparent age, only comes into play when it comes to sentencing. The contradictions in respect of the child's age cannot therefore assist the appellant to avoid criminal culpability".
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> In Francis Omuroni v Uganda, Criminal Appeal No. 2 of 2000, it was held that:
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> > " In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence, age may also be proved by birth certificate, the victim's parents or guardian and by observation and common sense".

14. In view of the foregoing, it cannot be said that age for purposes of sexual offences can only be proved by documentary or medical evidence. The prosecution produced in evidence a copy of a certificate of birth for one Martin Mbuvi, said to have been born on 13/11/2003. The name of the child's mother is indicated as Teresia Ndunge Kawinzi. The names of the complainant herein and his mother are totally different from those contained in the certificate of birth. It is evident that the prosecution produced the wrong certificate of birth. I did not take the testimony of the complainant and as such, I did not get the chance to observe him. The complainant testified on 14/12/2023. He indicated that he was born in 2012 and that he was 12 years at the time of testimony.

15. PW 3, the complainant's mother testified that the complainant was seven years old at the time of incident. From the evidence of the complainant and his grandmother, it would appear that as at the time of the alleged offence, the complainant was between seven and eight years old. In cases of defilement, as far as age is concerned, all that the prosecution needs to prove is that the alleged victim was below the age of eighteen years at the time of offence. However, proof of age must be beyond

reasonable doubt since age is a key ingredient of the offence. In the case of Kaingu Elias Kasono v Republic Criminal Appeal No. 54 of 2010, the Court of Appeal sitting at Malindi held as follows

> " Age of the victim of the sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved in the same way as penetration in cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed upon conviction will be dependent on the age of the victim"

16. There is no contrary evidence to dispute the fact that the complainant was a child of tender years as at the time of the alleged offence. I have no reason to doubt it.

Penetration

17. The only direct evidence in respect of the offence is that of the complainant himself. The complainant testified on 14/12/2023. The record indicates that the complainant gave sworn testimony after the court conducted a voire dire examination and the court found that he understood the importance of telling the truth. Section 124 of the *Evidence Act* provides as follows:

> " Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:
>
> Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."

18. Section 19 of the *Oaths and Statutory Declarations Act* is concerned with the reception and admissibility of evidence of a child of tender years. The section starts by declaring that where the child does not, in the opinion of the court understand the nature of an oath, his evidence may nonetheless be received though not given upon oath, but that evidence shall only be received if, again in the opinion of the court the child is possessed of sufficient intelligence to justify the reception of the evidence and also if, the child understands the duty of speaking the truth.

19. The question of who is a child of tender years for purposes of evidence was settled by the Court of Appeal. In the case of Maripett Loonkomok v Republic [2016] eKLR, the Court of Appeal held as follows:

> " The question therefore is, who is a child of tender years? The *Sexual Offences Act* and the *Oaths and Statutory Declarations Act* are silent on this question. However way back in 1959 in the celebrated case of Kibageny Arap Kolil v R (1959) EA 82 the Court of Appeal for Eastern Africa held that the phrase "a child of tender years" meant a child under the age of 14 years. The only statutory definition of a "child of tender years" is section 2 of the *Children Act* where it is defined to mean a child under the age of 10 years. This Court has recently in Patrick Kathurima v R,Criminal Appeal No.137 of 2014 and in Samuel Warui Karimi v R Criminal Appeal No.16 of 2014 stated categorically that the definition in the *Children Act* is not of general application; that it was only intended for the protection of children from

criminal responsibility and not as a test of competency to testify. It follows therefore that the time-honoured 14 years remains the correct threshold for voir dire examination."

20. In the authority of Fransisio Matovu v Republic [1961] E.A 260, it was held, inter alia that:

> " (I) the trial magistrate should question the child to ascertain whether the child understands the oath and;
>
> (2) If the court does not allow it and not to be sworn, it should record whether or not in the opinion of the court the child is possessed of sufficient intelligence to justify the reception of evidence and understands the duty of speaking the truth."

21. However, in the authority of Maripett Loonkomok (supra), the Court of Appeal held that mere failure to conduct a voire dire examination does not vitiate the trial. The complainant herein gave sworn testimony. His evidence does not therefore fall under the ambit of section 124 of the *Evidence Act*. This implies that the requirement of corroboration or giving reasons as to why the trial court is satisfied that the minor is telling the truth does not arise. I am guided by the authority of Johnson Muiruri v Republic [1983] KLR 445, in which the Court of Appeal held that:

> " In our view corroboration of evidence of a child of tender years is only necessary where such a child gives unsworn evidence".

22. The court however added that in such circumstances, the trial court should warn itself that it would be unsafe to convict without corroboration. Similarly, in the case of Kibageny Arap Kolil v R [1959] EA 82, the Court of Appeal for Eastern Africa held that:

> " But even where the evidence of a child of tender years is sworn (affirmed) then although there is no necessity for its corroboration as a matter of law, a court ought not to convict upon it if uncorroborated without warning itself and the assessors if any of the danger of doing so..........In short we are of the view that, in law, evidence of a child of tender years given on oath after voire-dire examination requires no corroboration but the court must warn itself that it should in practice not base a conviction on it without looking for and finding corroboration for it."

23. The proviso to section 124 of the *Evidence Act* makes an exception for the requirement of corroboration of unsworn testimony of a child of tender years in criminal proceedings involving sexual offences where the only evidence is that of the alleged victim. The provision empowers the court to convict an accused person if, for reasons to be recorded, the court is satisfied that the alleged victim is telling the truth. In my considered view, one of the main reasons as to why a court would be satisfied that the alleged victim is telling the truth is the presence of corroborative evidence. Whether the testimony of the alleged victim of tender years is given on oath or not, the court must of necessity exercise great caution before convicting an accused person.

24. The question as to whether there is corroborative evidence becomes paramount. I say so because, in criminal proceedings, it is the duty of the prosecution to prove its case against the accused person beyond reasonable doubt. In view of the foregoing, I hereby warn myself that although the complainant herein gave evidence on oath, it would be unsafe to convict the accused in the absence of corroborative evidence. I will seek to be satisfied that indeed, the complainant told the truth. I did

not take the testimony of the complainant. The record indicates that the complainant stated in part as follows:

> "....he held me, he removed my trouser, he told me to lie on the ground facing down. I lay (sic) down and he told me not to scream, he lay (sic) on top of me and I asked him for forgiveness............................he blocked my mouth as I tried to scream, he entered his penis inside my ass and I felt pain...."

25. As already indicated, the only eye-witness who was called to testify was the complainant. Indeed, majority of sexual offences are usually committed in secrecy and as such, it would be difficult to get an eye witness apart from the alleged victim. In Bassita Hussein v Uganda, Criminal Appeal No. 35 of 1995, the Supreme Court of Uganda held as follows:

> "The Act of sexual Intercourse or penetration may be proved by direct or circumstantial evidence and corroborated by medical evidence or other evidence. Though desirable, it is not a hard and fast rule that the victim's evidence must always be adduced in every case of Defilement to prove sexual intercourse or penetration. Whatever evidence the Prosecution may wish to adduce to prove its case, such evidence must be such that it is sufficient to prove the case beyond reasonable doubt".

26. In most cases, penetration is proved by testimony which may be corroborated by medical evidence. However, absence of medical evidence does not ipso facto mean that there was no penetration-See the case of Fappyton Mutuku Ngui v Republic [2014] eKLR. The prosecution produced in evidence a Post Rape Care (PRC) form. The form does not bear the name of the patient. Furthermore, it is not clear from the form, when the patient was examined. The dates indicated are 13/1/2020 and 10/1/2020. I am unable to link the form to the complainant. The medical practitioner who filled the form was not called to testify. It is therefore not clear whether the form related to the complainant herein. If the prosecution produced a wrong birth certificate, it is possible that the PRC form could relate to another person, other than the complainant herein.

27. Given the circumstances, I have no option but to disregard the PRC form. The other medical document is the P3 form. This was filled on 13/1/2020. The same indicates that upon examination of the complainant, it was observed that there were bruises around the anal opening as well as inflammation (redness and swelling) of the rectal mucosa. On the strength of the complainant's testimony coupled with the medical evidence, I am satisfied that there was penetration of the complainant's anus.

28. The testimony of the complainant of the complainant is clear on the events that led to him being sexually abused. The complainant further gave a clear account of what the assailant did to him. The totality of the evidence on record comprising of the testimonies of the complainant and the other prosecution witnesses leaves no room for doubt that the complainant was defiled. I have no reason to doubt that the injuries on the complainant's anus were caused by an act of sexual penetration. The act was definitely intentional and unlawful.

Identification of the assailant

29. The record indicates that the complainant identified the accused person as the one who had sexually abused him. That he had known the accused person by face but not his name. The complainant stated that he went home and reported to his sister what the accused person had done to him. It is not clear how he described the accused person to his sister. The complainant stated that he used to see the accused person at Kathekani. The record indicates that the accused person was arrested on the

same day when the incident is said to have occurred. PW 2 stated that she was informed of what had happened and thereafter, she reported to the area Chief, whereupon the accused person was arrested. The testimony in-chief of PW 2 does not clearly indicate how the suspect was identified to her.

30. However, when PW 2 was cross-examined by the accused person, she stated that the complainant mentioned the name Mbuvi Komu. PW 3, the complainant's grandmother stated that the children who were with the complainant informed her that they had been chased by Mbuvi. That when the complainant arrived, he stated that mbuvi had done bad manners to him. As for the police, they knew of the accused person when he was apprehended and taken to Nthongoni Police post. The testimony of the complainant was that he knew the accused person by face. He was categorical that he had not known the accused person by name. On the other hand, the evidence of PW 2 and PW 3 indicates that the complainant could have mentioned the accused person's name to them. Be that as it may, the prosecution evidence indicates that the complainant knew the accused person before the incident. The accused person did not deny the fact in his defence. The village elder and the Assistant Chief confirmed that the accused person and the complainant hailed from the same locality.

31. In Mwenda v Republic [1989] KLR 464, the Court of Appeal held that whenever the case against an accused person depends wholly or substantially on the correctness of one or more identifications of the accused, special need for caution before convicting in reliance on the correctness of the identification is necessary. The Court of Appeal in the case of Marube & Another v Republic [1986] KLR 356 observed that in the evaluation of the evidence of the identifying witness, the court must ensure beyond all reasonable doubt that the witnesses were honest and unmistaken about their identification. In Kiarie v Republic [1984] KLR 739, the Court of Appeal was of the opinion that where the evidence relied upon to implicate an accused is entirely of identification, that evidence should be watertight to justify a conviction.

32. A similar observation was made by the Court of Appeal in the case of Wamunga v Republic [1989] KLR 424 where the court held as follows:

> " Where the evidence against an accused is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction ".

33. Further, in the case of Simiyu & Another v Republic [2005] I KLR 192 at page 195 the Court of Appeal observed:-

> " In every case in which there is a question as to the identity of the accused, the fact of there having been a description given and the terms of that description are matters of the highest importance of which evidence ought to be given first of all by person or persons who gave the description and purported to identify the accused and then by the persons or person to whom the description was given. The omission on the part of the complainants to mention their attackers to the police goes to show that the complainants were not sure of the attackers' identity."

34. Similarly, in the case of Francis Kariuki Njiru & 7 others v Republic [2001] eKLR, the same court held:

> " The law on identification is well settled as this court has from time to time said that the evidence relating to identification must be scrutinized carefully and should only be accepted and acted upon if the court is satisfied that the identification was positive and free from the possibility of error. The surrounding circumstances must be considered. Among the factors

the court is required to consider is whether the eye witnesses gave a description of his or her attacker or attackers to the police at the earliest opportunity." (Emphasis mine)

35 In Maitanyi v Republic [1986] KECA 39 (KLR), the Court of Appeal held as follows:

1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult;

2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description;

3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision, it must do so when the evidence is being considered and before decision is made;

4. Failure to undertake an inquiry of careful testing is an error of law and such evidence cannot safely support a conviction.

36. Being guided by the above authority, I hereby warn myself of the danger of relying on the evidence of a single identifying witness. Unfortunately, no inquiry was made by the then trial court into the circumstances under which the complainant was able to identify his assailant. The complainant testified on 14/12/2023. This was after a period of almost four years from the date of the incident. The complainant's testimony does not appear to have changed. Whatever he stated in court was similar to what he reported to his grandmother, the village elder and the police. His evidence was consistent in material particulars. He was categorical that it was the accused person who had sexually abused him. It would appear that the memory of what happened to him on the dreadful day was still fresh in his mind. I do not see anything that would suggest that the complainant was not sure of who had sexually abused him on the material day.

37. The incident occurred in broad daylight when visibility was clear. The events that led to the impugned act as narrated by the complainant provided ample opportunity to the complainant to identify his assailant. Whatever description that the complainant gave to his grandmother and the village elder led to the arrest of the accused person on the same day. They had no difficulties in establishing who the suspect was. In my view, the identification of the accused person as the assailant cannot be suspected to be an afterthought. The chain of events is a clear indication that the complainant knew the person who had violated him. There is no evidence of bad blood between the complainant and his family on one hand and the accused person or his family on the other hand. I find that the circumstances were conducive for a proper identification and that there was no possibility of error. The complainant positively identified the accused person as his assailant.

Whether the prosecution has proven its case

38. I have considered the accused person's defence bearing in mind that he shoulders no duty to prove his innocence. The accused person did not even address the allegations. He did not even talk about what transpired on the material day. He gave a totally different story. It is the word of the complainant against that of the accused person, bearing in mind that the burden is on the prosecution to prove the allegation against the accused person beyond reasonable doubt. In Philip Nzaka Watu v Republic [2006] eKLR , it was held that to find a conviction in a Criminal case, the trial court has to be satisfied of the accused person's guilt beyond reasonable doubt.

39. On proof beyond reasonable doubt, the court stated in Stephen Nguli Mulili v Republic [2014] eKLR:

> It is not in doubt that the burden of proof lies with the prosecution. The locus classicus on this is the case of DPP V WOOLMINGTON, (1935) UKHL 1 where the court eloquently stated that the "golden thread" in the "web of English common law" is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases. See FESTUS MUKATI MURWA V R, [2013] eKLR."

40. In the famous case of Miller v Ministry of Pensions [1947] 2 All ER 372 , Lord Denning stated with regard to the degree of proof beyond reasonable doubt:

> That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice."

41. In Bakare v State (1987) 1 NWLR (PT 52) 579 , the Supreme Court of Nigeria emphasized on the phrase proof beyond reasonable doubt, stating:

> Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability ." (Emphasis mine)

42 The standard of proof "beyond reasonable doubt" is grounded on a fundamental societal value determination that it is far worse to convict an innocent man than to let a guilty man go free. A reasonable doubt exists when the court cannot say with moral certainty that a person is guilty or that a particular fact exists. It must be more than an imaginary doubt, and it is often defined judicially as "such a doubt as would cause a reasonable and prudent person, in one of the graver and more important transactions of life, to pause or hesitate before or taking the represented facts as true and relying and acting thereon" (see Clarence Victor, Petitioner 92-8894 v. Nebraska, 511 U.S. 1 (1994); Rex v. Summers, (1952) 36 Cr App R 14; Rex v. Kritz, (1949) 33 Cr App R 169, [1950] 1 KB 82 and R. v. Hepworth, R. v. Feamley, [1955] 2 All E.R. 918). Beyond reasonable doubt is proof that leaves the court firmly convinced that the accused is guilty. Reasonable doubt is a real and substantial uncertainty about guilt which arises from the available evidence or lack of evidence, with respect to some element of the offence charged.

43. It is the belief that one or more of the essential facts did not occur as alleged by the prosecution and consequently there is a real possibility that the accused person is not guilty of the crime. This determination is arrived at when after considering all the evidence, the court cannot state with clear conviction that the charge against the accused is true since an accused may not be found guilty based upon a mere suspicion of guilt. I have already found that the complainant was defiled and that the accused person was positively identified as the perpetrator.

44. I do not find difficulties in believing the complainant. His testimony was corroborated by other witnesses. Even after several years, the complainant did not change his story when he testified in court. As for the accused person, I find no reason to give him a benefit of doubt. The evidence against him is overwhelming and I see no room for escape. The prosecution evidence is water tight and irresistibly points to the guilt of the accused person. It is my finding that the prosecution has discharged both the legal and evidentiary burden of proof. The proof is beyond reasonable doubt.

Disposition

45. In view of the foregoing, I find that the prosecution has proven its case against the accused person beyond reasonable doubt. Consequently, I hereby find the accused person Guilty and proceed to Convict him of the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, pursuant to the provisions of section 215 of the Criminal Procedure Code. Having convicted the accused person on the main count of defilement, I make no orders as to the alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 26 TH DAY OF NOVEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.