



**Republic v Lekutai (Sexual Offence E001 of 2025)
[2025] KEMC 263 (KLR) (11 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 263 (KLR)

**REPUBLIC OF KENYA
IN THE WAMBA MOBILE LAW COURTS
SEXUAL OFFENCE E001 OF 2025
AT SITATI, SPM
AUGUST 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDALLA LEKUTAI ACCUSED

JUDGMENT

1. The accused person denied the main charge of defilement contrary to 8(1) and (3) of the *Sexual Offences Act*. The particulars were that on 11th January, 2025 in [particulars withheld] village of Wamba Location within Samburu East Sub-County of Samburu County, he intentionally and unlawfully caused his penis to penetrate the vagina of L.L. (initials) a female minor aged 13 years old.
2. In the alternative count, he denied the charge of committing an indecent act to a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars were that on 11th January, 2025 in [particulars withheld] village of Wamba Location within Samburu East Sub-County of Samburu County, he intentionally and unlawfully caused his penis to touch the vagina of L.L. (initials) a female minor aged 13 years old.
3. The accused person represented himself at the trial conducted by Prosecution Counsel Moses Ndira and Peter Esimkele for the ODPP.

The DPP'S Case

4. PW1 L.L. told the court that on 11th January, 2025 at 4pm she escorted her friend N to her parents' home in [particulars withheld] village. On arrival, her friend N asked her to stay for to play. She agreed and just then the father of the said N arrived at the homestead riding a bicycle. On arrival, the father of N asked N if it was N who had brought LL over to the homestead and the said N affirmed that she had done so.



5. When it got late, PW1 informed N and her father that she was leaving but the father prevailed upon LL to stay overnight on the ground that elephants would trample her down on the way. She stayed on and washed utensils while N's father prepared supper for the 2 girls and the siblings of N.
6. According to PW1, the accused person asked her to go to a certain house previously used by morans but she resisted whereupon he pulled her into his main house and locked her up in his bedroom. He ordered her to keep silent before pushing her onto his bed, removed her clothes including panty, applied Vaseline to her vagina and proceeded to insert his penis into her vagina. She tried to scream but he muffled her mouth using his hands causing her to go dizzy. He then covered her face using a pillow to completely silence her.
7. The sexual intercourse was repeated a number of times overnight till 5am. He kept boasting that he had been eyeing her for some time and now was the long awaited chance.
8. In the morning, he locked her up in the main house. She kept pleading with her friend N to unlock the door and was let out. She used the chance to flee and alerted her aunt who took her to the police and the hospital for medical attention. The suspect was later arrested and brought to court.
9. In cross-examination, the following came to light :-She only escorted N to the home and was persuaded to stay on;The accused person first took PW1 to the morans' quarters but she resisted and he pushed her to his bedroom in the main house;She did not take any photographs of the suspect in the act.
10. PW2 PPL the aunt of PW1 told the court that on 11th January, 2025 at 8am she went to the market to sell wares leaving PW1 and other children at home. She added that when she returned at 2pm, she found PW1 playing with N who the was the daughter of the accused person. After a brief stay, she left for other afternoon tasks.
11. On returning again at 6pm, PW2 found that PW1 and N had left the scene but did not pay uch attention since she knew that PW1 would return after playing with N but to her surprise, PW1 did not return home that evening.
12. The witness told the court further that the next day, PW1 returned home crying. She narrated how the father of N had repeatedly defiled her overnight. This made PW2 take her to the police and the hospital. She noted that the minor looked battered and was bleeding from the sexual intercourse. She confirmed that PW1 was a minor.
13. In cross-examination, the witness affirmed that the genitalia was torn and bleeding.
14. PW3 Clinical Officer Erica Joseph of Wamba Sub-County Hospital produced the P3 Form, Post Rape Care Form and treatment notes as P.Ex.1 -2 showing that when he examined the minor PW1 he observed that:Visible bruises on the faceVisible bruises on the side of the mouthMucus discharging from external genitaliaVisible laceration of labia minoraLabia majora normalLaboratory tests showed negative HIV, negative hepatitis and normal urinalysis.
15. Based on the foregoing, he opined that the complainant had bene vaginally penetrated amounting to defilement.
16. In cross-examination, the clinical officer told the court that the minor narrated to him how she was strangled and sexually penetrated by a person well known to her.
17. PW4 Police Corporal Jediel Kimathi testified as the Investigating Officer. He told the court that after the aunt and the complainant lodged the report, he was assigned the case by the OCS. He recorded the witnesses' statements and issued the P3 Form which was duly filled. He added that he effected the



arrest of the accused person after he returned to the village 2 months after he went underground on learning that the complainant had named him to the police. After being arrested, the suspect blamed Satan for the offence. He produced the age assessment report showing that the child's age fell between 10 to 15 years. He also produced the investigation diary in evidence.

18. In cross-examination, CPL Kimathi told the court that he did not lift the suspect's fingerprints from the child's body.
19. At that stage, the DPP closed their case whereupon the court ruled that the accused person had a case to answer.

The Defence Case

20. The accused person gave an Unsworn Statement denying the charges. He told the court that his daughter N never brought the complainant to his homestead as alleged. He added that he was alone at home and never saw the complainant come over. Further, that he was never medically examined to link him to the crime. He complained that PW2 who was his cousin had longstanding grudges against him and had fabricated the case to fix him up. At that stage, the accused closed his defence.
21. The duty of the court is to determine whether the DPP had proved the charges beyond any reasonable doubt.

Issues For Determination

22. On a charge of defilement, the DPP is required to prove:
 1. Age of the minor.
 2. Penetration or lack of it
 3. Identity of the offender if penetration is proved

Issue 1: Age Of The Complainant

23. The age assessment report shows that the child was aged below 15 years old and the court so finds.

Issue 2: Proof Or Lack Of Proof Of A Sexual Offence

24. From the material placed before the court, the tested sworn evidence of the minor and the medical report showed that the minor had been vaginally penetrated causing lacerations to her labia minora. That explains why she was bleeding when her aunt first saw her a few minutes after she had escaped from the accused person's captivity.
25. The child affirmed that there was a whole insertion of a male organ into her vagina causing penetration during a number of sexual rounds in the accused person's house. He had locked her in the room and covered her mouth and face to muffle her. She complained of strangulation and this was corroborated by medical evidence in the P3 Form.
26. Her testimony was straight forward and unshaken in cross-examination thereby convincing the court that she had been wholly truthful within the meaning of section 124 of the [Evidence Act](#) which states as follows:
27. Notwithstanding the provisions of section 19 of the oaths and Statutory Declaration Act, where the evidence of the victim 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 evidence in support thereof implicating him.

28. rovided 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.
29. On this issue of penetration, the court found further guidance from the Court of Appeal decision of Geoffrey Kioji V. Republic, Crim. App. No. 270 of 2010 (Nyeri) [U/R] where the scope of section 124 of the Evidence Act was discussed in the following terms:

“Where available, medical evidence arising from examination of the accused and linking him to the defilement would be welcome. We however hasten to add that such medical evidence is not mandatory or even the only evidence upon which an accused person can properly be convicted for defilement. The court can convict if it is satisfied that there is evidence beyond reasonable doubt that the defilement was perpetrated by accused person. Indeed, under the proviso to section 124 of the Evidence Act, Cap 80 Laws of Kenya, a court can convict an accused person in a prosecution involving a sexual offence, on the evidence of the victim alone, if the court believes the victim and records the reasons for such belief.”

30. The finding of this court is that the complainant was vaginally penetrated and this amounted to defilement.

Issue3: Identity Of The Offender

31. On this issue, the court received evidence of positive recognition. She knew the accused as N’s father. She saw him at 4pm when he showed up riding a bicycle. He kept engaging her that evening till he pulled her into his bedroom where he repeatedly had prohibited sexual intercourse with PW1. She was continuously engaged with him without interruption from the daytime of 4pm onwards giving her more than sufficient opportunity to recognize him since he was well known to her.
32. With this evidence, the court finds that the present accused person was the properly and positively recognized suspect and this was not a case of fabrication as alluded to in the defence.
33. Relatedly, there was the line of evidence of the first report given to a person in authority. Following the repeated defilements, the child named the accused person to her aunt and to the police both of whom were persons in authority over the subject. She named him while she had not yet consulted anyone and this is further evidence of truthfulness of the child as was discussed in the case of Bernard Gathiaka Mbugua & 4 others v Republic [2016] eKLR (Waki, Nambuye & Kiage, JJ.A) the learned Judges held as follows:

“Perhaps the belief is encouraged by the emphatic pronouncements made by this Court in many of its decisions, on the significance of a first report. We may go back to 1952 in the case of Terekali & Another vs. Republic [1952] EA 259 when the predecessor of this Court stated as follows:-

“Evidence of first report by the Complainant to a person in authority is important as it often provides a good test by which the truth and accuracy of subsequent statement may be gauged and provides a safeguard against later embellishment or made up case. Truth will



always come out in a first statement taken from a witness at a time when recollection is very fresh and there has been no time for consultation with others...”

34. In defence, he blamed the complainant’s aunt for holding out a grudge against him but there was nothing to prove this allegation. When PW2 testified, the accused never raised the issue of grudges at all. In the result, the defence created no reasonable doubt and is dismissed.

Conclusion

35. With the proof of the age of the child, evidence of vaginal penetration and the positive identity of the suspect, the court finds the Accused person herein guilty of defilement under section 215 of the Criminal Procedure Code. Right of appeal is 14 days.

DATED, READ AND SIGNED AT MARALAL THIS 11th DAY OF AUGUST, 2025

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL LAW COURTS

Present

Dpp Peter Esimkele

Accused Person

Court Assistant James

