

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. E015 OF 2025

MARTIN KIPKOECH NGENO

.....APPELLANT

V E R S U S

REPUBLIC

RESPONDENT

J U D G M E N T

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.

He was also charged in the Alternative with the Offence of **Indecent Act with a Child Contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006.**

The trial Court upon hearing the matter convicted the Appellant on the main count and sentenced him to serve 20 Years Imprisonment.

The Appellant appealed against both the Conviction and Sentence.

The Prosecution has conceded to the Appeal by filing a Notice of Concession dated 27.6.2025.

It is trite Law that there are three issues to be proved in a Defilement case being;

1. Penetration
2. Age
3. Identification

Any of the Above issues not being established or proved is fatal to the Prosecution's Case.

The central issue of age has been faulted by both the Respondent and the Appellant. Vide the Submissions dated 18.12.2025 by the Appellants they take issue on the issue of production of a copy of Birth Certificate as secondary evidence without laying a basis.

This is Contrary to Sections 64, 65 and 68 of the Evidence Act. The original Birth Certificate was not produced. The Age Assessment also had its challenges. The Maker did not produce it but was merely produced by the Prosecution Contrary to the Law.

This issue was addressed in the Case of Republic =VS= Teresia Wairimu Thuo [2018) eKLR.

The mix-up in this trial cannot be explained and blame ought to lie with the Prosecution. The result is that the Conviction cannot be said to be safe. It is the duty of the Prosecution to prove its case beyond all reasonable doubt. It has failed in this case. The issue of Age is not proved as per evidence on record from the foregoing.

Accordingly, I do find the Conviction not well founded and quash it. The Sentence is therefore set aside.

The Appellant is set at liberty unless lawfully held.

Judgement delivered, dated and signed this 20th day of April, 2026.

.....
HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele/Susan - Court Assistants

Ms Mwangangi for the State

Appellant - Present

**Mr. Kipngetich holding brief Kiptoo for the
Appellant**

ORIGINAL