



**Mwangi v Republic (Criminal Appeal E050 of 2025)
[2026] KEHC 5435 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL APPEAL E050 OF 2025**

**KW KIARIE, J
APRIL 28, 2026**

BETWEEN

ROBINSON GAKUO MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in the S.O. Case NO. E026 of 2023 of the Senior Principal Magistrate's Court at Engineer by Hon. E. Wanjala -Principal Magistrate)

JUDGMENT

1. Robinson Gakuo Mwangi, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence are that on the 12th day of November 2023 at [particulars withheld] village, within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of L.N.N., a child aged fifteen years.
3. The appellant was sentenced to serve twenty years' imprisonment. He was aggrieved and filed this appeal against the conviction and sentence. He raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact by convicting the appellant with inconsistent evidence, theorizing conspiracy and fabrication against the appellant.
 - b. The learned trial magistrate erred in law and fact by convicting the appellant, and yet the ingredient of identification was not conclusively proved as per the law.
 - c. The learned trial magistrate erred in law by convicting the appellant, and yet the ingredient of penetration was not conclusively proved as required by the law by the prosecution.



- d. The learned magistrate erred in law and fact by convicting the appellant, yet failed to consider the fact that the sentence was excessive and harsh in relation to the weight of the cases.
4. The state opposed the appeal through M/s Odero Vena, prosecution counsel. She argued that the offence was proven to the required standards and that the sentence was appropriate.
5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, having neither seen nor heard any witnesses. I will be guided by the celebrated case of Okeno vs the Republic [1972] EA 32.
6. An offence of defilement is established against an accused person when the prosecution has proved the following ingredients:
 - a. That there was penetration of the complainant's genitalia;
 - b. That the accused was the perpetrator and
 - c. The victim must be below eighteen years old.

This position was echoed in the case of Fappyton Mutuku Ngui vs Republic [2012] eKLR. Ngugi J. (as he was then) said:

Going by this definition of defilement... the issues which the court needs to determine...first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child, and finally, whether the penetration was by the Appellant.

7. I will determine if the prosecution proved these ingredients to the required standards.
8. A copy of the certificate of birth of L.N.N. was produced. It indicates that she was born on the 5th day of October 2008. As of the 12th day of November 2023, she was 15 years and 1 month old. Her age was therefore proven.
9. L.N.N. (PW1) testified that on November 12, 2023, around 6:30 p.m., she was sent to deliver milk at a kiosk. On her return journey, the appellant followed her, caught up with her, and assaulted her. She attempted to scream, but he threatened to kill her. She went further to testify that the two had interacted when she was soliciting for some money. The appellant had donated Kshs. 50.00
10. Dr John Kariuki Waweru (PW4) adduced the medical evidence. On examination, the complainant was found to have multiple bruises around the vaginal area, and the hymen was found to be broken. There was evidence of spermatozoa and blood stains.
11. Based on the medical evidence and the complainant's testimony, the prosecution established that penetration meets the necessary standards.
12. Robinson Gakuo Mwangi, in his defence, argued that he was incorrectly implicated, and there is no record evidence indicating he was set up for the offence. The learned trial magistrate was justified in dismissing his defence.
13. I find that the appellant's conviction was based on sound evidence.
14. The appellant contended that the sentence was harsh. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial



court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James vs. Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R. vs. Shershewcity* (1912) C.CA 28 T.LR 364.

15. Section 8 (3) of the *Sexual Offences Act* provides that:

A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

16. The appellant has not provided sufficient reasons to demonstrate that the learned trial magistrate acted upon some incorrect principle or overlooked some material factor. He was sentenced to the minimum prescribed sentence for the offence. The punishment cannot be described as harsh. I have no basis for interfering with the sentence.

17. The appeal is therefore dismissed.

DELIVERED AND SIGNED AT NYANDARUA ON THIS 28TH DAY OF APRIL 2026

KIARIE WAWERU KIARIE

JUDGE

