



**Kirui v Republic (Criminal Appeal 50 of 2019)  
[2025] KECA 1086 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1086 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL 50 OF 2019  
JM MATIVO, PM GACHOKA & WK KORIR, JJA  
JUNE 20, 2025**

**BETWEEN**

**WESLEY KIPLANGAT KIRUI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the judgment of the High Court of Kenya at Nakuru  
(Prof. J. Ngugi, J.) dated 15th June 2019 in HCCRA No. 60 of 2019)*

**JUDGMENT**

1. This is a second appeal from the conviction and sentence of the trial magistrate upheld by the first appellate court. Wesley Kiplangat Kirui was charged with the offence of defilement of a girl contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* in Molo CMC Criminal Case (SO) No. 1043 of 2010. The particulars of the offence were that on 14<sup>th</sup> April 2010 at [particulars withheld] village Tirbugon Molo District within Rift Valley Province, the appellant caused his penis to penetrate the vagina of MCM, a child aged 4 years old. He faced an alternative charge of committing an indecent act contrary to section 11 (1) of the *Sexual Offences Act*. The particulars of the offence were that on the same day and in the same place, the appellant caused his penis to come in contact with MCM, a child aged 4 years old.
2. The appellant was arraigned before the trial court where he pleaded not guilty. After a full trial, the appellant was convicted on the main charge of defilement and sentenced to life imprisonment on 23<sup>rd</sup> March 2012. Dissatisfied, the appellant appealed before the Nakuru High Court in HCCA No. 60 of 2012 and the learned Judge, Prof. J. Ngugi, J (as he then was) found that the appeal was without merit and dismissed in its entirety.
3. Unrelenting, the appellant has approached this Court. He filed his notice of appeal dated 24<sup>th</sup> June 2019 and memorandum of appeal, similarly dated, that raised seven grounds disputing the findings



of the learned judge. In summary, the appellant lamented that: no notice of enhancement was served and admitted in court; the evidence of the prosecution was marred with contradictions, incredibility and inconsistencies; the charge sheet was incurably defective; the prosecution failed to discharge its burden of proof to the required standard; and the sentence meted out was harsh and unlawful. For those reasons, he prayed that his appeal be allowed by quashing his conviction and setting aside the sentence.

4. When the appeal was heard on 17<sup>th</sup> March 2025, the appellant represented himself while the respondent was represented by Mr. Omutelema, Senior Assistant Deputy Director of Public Prosecution. The appeal was disposed of by way of written submissions.
5. The appellant's written submissions dated 30<sup>th</sup> June 2024 submitted that the sentence upheld by the High Court was harsh and excessive. He decried that section 8 (2) of the *Sexual Offences Act* left no room for the exercise of discretion by the court. He submitted that the same was bad law, archaic, unconstitutional and prejudicial to him. For that reason, he urged this Court to give a determinate sentence. Finally, he submitted that the two courts failed to consider his defence. He urged this Court to find that his defence cast doubt on the evidence of the prosecution as to render the conviction unsafe.
6. The respondent filed written submissions, a case digest and a list of authorities all dated 3<sup>rd</sup> September 2024. Learned counsel submitted that all the ingredients to the offence of defilement were proved beyond any shadow of a doubt. He added that the evidence of the prosecution was credible, weighty and was sufficient enough to sustain a conviction. The respondent noted that the trial court considered his defence which was properly rejected. Lastly, on the sentence, it submitted that it was lawful. It prayed that the appeal be dismissed.
7. As a second appellate Court, our jurisdiction is set out in section 361 of the *Criminal Procedure Code*. Our role was set out in the case of *Karani vs. R* [2010] 1 KLR 73 as follows:

This is a second appeal. By dint of the provision of section 361 of the *Criminal Procedure Code*, we are enjoined to consider only matters of law. We cannot interfere with decision of the superior court on fact unless it is demonstrated that the trial court and the first appellate court considered matters they ought not to have considered or that they failed to consider matter they should have considered or that looking at the evidence as a whole they were plainly wrong decision, in which case such omission or commission would be treated as a matter of law.”

8. The facts set out in the record before us are as follows: PW1 MCM, the complainant, testified that she was a 6-year-old who dropped out of [particulars withheld] Primary School because other children were laughing at the fact that she had been defiled by the appellant. She recalled that on the fateful day, she was grazing cows with her brother K near the appellant's house. It then started raining at around 4:00 p.m. The appellant asked the complainant to come to his house. She went and stood outside the said house together with her brother.
9. Suddenly, the appellant grabbed her hand and pulled her inside the house. He then undressed her, removed his clothes and sexually assaulted her. PW1 screamed. He then threatened to cut her with a slasher, prompting her to stop. She felt pain and bled. Her brother watched the appellant perform this heinous act. The appellant left the door open.
10. Soon thereafter, PW1's mother PW2 VC came to the scene. She raised an alarm with the area's residents. This led the appellant to make a swift exit from the scene. He was, however apprehended by area residents. On rescuing her daughter, PW1's mother took her to Elburgon Hospital where she received treatment.



11. PW2 confirmed that her daughter PW1 stopped going to school. She testified that on 14<sup>th</sup> April 2010, she asked PW1 and her brother K to graze cows in the appellant's employer's shamba at around 10:00 a.m. She went to look for them at 4:00 p.m. when it started raining and stumbled upon the screams of PW1 emanating from the appellant's house. The door was open.
12. On gaining access to the house, PW2 found her son K seated. She caught the appellant red handed sexually assaulting her daughter. There was a slasher next to him. She instantaneously screamed, catching the attention of neighbours. PW2 observed her daughter's private parts. She saw that she was bleeding.
13. Meanwhile, the appellant fled the scene. He was however chased by PW2's husband and caught. PW2 took PW1 to the hospital and was referred to the police station. PW1 was admitted in the hospital for one day. She maintained that she did not have a grudge with the appellant.
14. PW3 MCK, PW1's father and PW2's husband testified that on 14<sup>th</sup> April 2010, he sent PW1 and her brother to graze their cows. He then left for work and returned home at around 4:00 p.m. It was then that he heard screams coming from the direction of the appellant's home. He followed the crowd to investigate what had transpired. It was here that he received the news with great incredulity that his daughter had been defiled by the appellant.
15. Suddenly, PW3 saw the appellant running away with a slasher. He pursued him together with other residents and arrested him about three kilometers away from the crime scene. He learnt that his daughter was taken to Elburgon Nyayo Hospital. He maintained that he had no grudge against the appellant.
16. PW4 Paul Kibet Mutai testified that on 14<sup>th</sup> April 2010, he was slashing grass in the shamba of the appellant's employee when he heard PW1 crying about 50 meters away. Dismissive, PW4 continued working until he heard PW2 screaming. He then rushed to the scene and found PW1's eyes red. She was also bleeding. PW2 explained that she caught the appellant sexually assaulting her. On inquiry, the appellant stated that they were just playing. He then attempted to escape with a slasher but was arrested 3 kilometers away. PW1 was later taken to the hospital.
17. PW5 Henry Kiplangat Rono testified that on 14<sup>th</sup> April 2010 at 4:00 p.m., he was coming from the shamba in the company of Marion when he heard PW2 screaming inside the appellant's house. He was informed that PW1 had been defiled and was bleeding. The appellant tried to escape but he was arrested 3 kilometers away.
18. PW6 Jennifer Talai Chesire testified that she heard screams emanating from the appellant's house on 14<sup>th</sup> April 2010 at 4:00 p.m. She was informed that PW1 had been defiled. She saw that she was bleeding. She escorted PW1 to the hospital.
19. Clinician PW7 Euphantus Kinyanjui working at Elburgon Sub District Hospital filled the P3 form on 15<sup>th</sup> April 2010 regarding PW1 on suspicion of sexual assault. On examining the child, she observed that she was limping. Her hymen was torn and there were blood clots on her private parts. She also had an infection. She concluded that the child had been defiled. The P3 form was produced and marked in evidence. The appellant was similarly examined. His patient card was also produced in evidence.
20. PW8 PC Juma Kisera the investigating officer testified that on 14<sup>th</sup> April 2010, the appellant was escorted to Elburgon Police Station. He had the appellant arrested and took the complainant to hospital. He preserved the evidence that included the complainant's dress and underwear. He recorded witness statements and charged the appellant with the present offence.



21. At the close of the prosecution’s case, the trial court found that the prosecution had established a prima facie case against the appellant. He was placed on his defence. His unsworn testimony was that on 14<sup>th</sup> April 2010, he had been left by his employer at his home. He was at the junction of Marioshoni when he met a crowd of people accusing him of committing the offence. He challenged the evidence of the prosecution adding that he had been framed. He maintained his innocence denying that he committed the offence.
22. In order to sustain a conviction for the offence of defilement, the prosecution must establish the following conjunctive ingredients: the age of the complainant, penetration, and the identification of the perpetrator. On the age of the complainant, it was established that from the evidence of PW1, PW2 and PW7, the complainant was four years old at the time of the offence. This was further captured in the P3 form that was adduced in evidence.
23. On the aspect of penetration, the trial court and the High Court relied on the evidence of PW7, coupled with the minor’s testimony as proof that it was established beyond reasonable doubt. The minor was taken to hospital on the very day the offence occurred. On examination, her hymen was torn and she had blood clots on her private parts. That proves penetration within the meaning ascribed to the term under section 2 of the *Sexual Offences Act*.
24. The last ingredient is that of the identity of the perpetrator. Both the trial court and the High Court qualified the evidence of the complainant as deliberate with the truth in line with section 124 of the *Evidence Act*. It was established that the complainant was grazing cows in the appellant’s employer’s homestead. At 4:00 p.m., when it started raining, the appellant took advantage, lured the complainant into his home. He then grabbed her, undressed her and sexually assaulted her. PW1’s scream caught the attention of her mother PW2 who caught the appellant in the act. When a crowd gathered, the appellant attempted to flee the scene but was subsequently arrested. This evidence leads to a finding that the appellant committed the offence of defilement on the complainant.
25. The appellant’s defence did not dislodge the prosecution’s evidence. It was a mere denial. We are satisfied that, ultimately, the prosecution discharged its burden of proof to the required standard. Accordingly, the appeal against the conviction lacks merit and it is hereby dismissed.
26. On sentencing, the appellant was sentenced to life imprisonment in line with the provisions of section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. This sentence was upheld by the High Court. It is therefore not true that the sentence was enhanced as alleged by the appellant in his memorandum of appeal. A reading of the provision against the findings of the two courts finds that the sentence meted out was lawful.
27. Furthermore, the recent decisions of the Supreme Court in Republic vs. Joshua Gichuki Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and Republic vs. Manyeso [2025] KESC 16 (KLR) have affirmed that the mandatory nature of life sentence under section 8 (2) is lawful. We have no discretion to reduce the sentence set out therein. We therefore find that the appeal against the sentence lacks merit and it is hereby dismissed.
28. In the end, we find that the present appeal is unmerited.

Accordingly, we affirm the conviction and uphold the sentence.

**DATED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**J. MATIVO**

.....



**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCIArb.**

.....

**JUDGE OF APPEAL**

**W. KORIR**

.....

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

