



**Rono v Republic (Criminal Appeal E003 of 2023)  
[2025] KEHC 690 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 690 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E003 OF 2023  
JR KARANJA, J  
JANUARY 29, 2025**

**BETWEEN**

**ELVIS KIPKOECH RONO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Elvin Kipkosgei Rono appeared before the Senior Resident Magistrate at Kericho charged with defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* and in the alternative, committing an Indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act*.  
It was alleged that on the 25<sup>th</sup> January, 2019 at 1400 hours at [Particulars withheld] village Kericho county, the Appellant defiled a girl child LCK, aged seventeen (17) years or in the alternative touched the child's private parts with his male sexual organ.
2. There was also a second count of assault causing actual bodily harm, contrary to section 251 of the *Penal Code*, in that on the 25<sup>th</sup> February, 2019 at 1400 hours at [Particulars withheld] Kericho county, the Appellant unlawfully assaulted the girl child thereby occasioning her actual bodily harm.
3. After pleading not guilty to all the charges, the Appellant was tried and convicted on the main count of defilement for which he was sentenced to fifteen (15) years imprisonment. It is not clear from the record what became of the second count of assault. Apparently, the judgement of the trial court was silent in that regard.
4. Be that as it may, the Appellant was aggrieved by his conviction and sentence on the main charge of defilement and preferred the present appeal on the basis of the grounds set out in the petition of appeal filed herein on 11<sup>th</sup> January, 2023 by Enock Anyona Miruka & Co. Advocates.



At the hearing of the appeal the Appellant was represented by learned counsel M/s Kirui while the State/Respondent was represented by the Learned Prosecution counsel Mr. Masisa.

5. The hearing was by way of written submissions which were filed on behalf of the Appellant by Chelangat Kirui Advocates and on behalf of the Respondent by the office of the Director of Public Prosecutions (ODPP). Basically, having considered the appeal and its supporting grounds as well as the rival submissions the duty of this court was to reconsider the evidence and arrive at its own conclusions bearing in mind that the Trial Court had the benefit of seeing and hearing the witnesses.
6. In summary, the prosecution case was that the complainant (PW1) was at the material time a seventeen (17) years old form three (3) student at [Particulars Withheld] Secondary School and a person not known to the Appellant. On the material date, in the company of a cousin called MC she proceeded to a place called Brook where she left her cousin and sought to return to Kericho town using a motor cycle taxi (boda boda). She proceeded to the Brooke stage where she met and hired a motor cycle taxi operator who agreed to take her to Shivling Supermarket in Kericho town. However, the motor cycle taxi operator on arrival at the supermarket rode his motor cycle past the supermarket at a fast speed and took the complainant to a single roomed house where he threatened and assaulted her despite her screams which attracted neighbours to the scene but could not come to her rescue. Thereby enabling the motor cyclist to defile her.
7. After defiling the complainant four times the motor cyclist slept and this provided an opportunity for the complainant to leave the single roomed house to seek help from neighbours. She provided her mother's phone number to one of the neighbours CKS(Pw2), a grocery vendor at [Particulars withheld], Kericho town who then called the complainant's mother who instructed them to go to the local police station. The mother YC (Pw3), joined them a [Particulars withheld] police station and with the help of the neighbour (Pw2) the police were led to the house of the suspect motor cyclist who was identified as the Appellant and arrested.
8. The complainant after being examined by a clinical officer, Robert Kipyegon Langat (pw4), was found to have been assaulted and defiled. The clinical officer produced the necessary P3 form in that regard (i.e P.Exhibit 3). PC (W) Melvin Iraronga (PW5), carried out the necessary investigations and thereafter preferred the present charges against the Appellant.
9. In his defence, the Appellant denied the offence and implied that he was not the person being referred to as the suspect, Elvis Kipkosgei. He contended that his name was Ian Kiprotich Bett and that the suspect Elvis was his twin brother. That, on the material date he was at his place of work at Kikomba market in Kericho town when the complainant arrived there and asked for his twin brother with whom they had a relationship. Later he was called by a house caretaker and informed that he was wanted at [Particulars withheld] police station. He proceeded to the station and found the complainant. He accompanied the police to his twin brother's house which was searched and beer bottles found therein.
10. The Appellant stated that the police allowed him to call his suspect brother and when he did, the suspect alleged that he had fought with the complainant and advised him (Appellant) to run away from the police. That the suspect refused to go to the police station. Thereafter, the Appellant was freed by the police, but on the following day he was told to go to the district hospital where he was examined and informed that he was suffering from STI (Sexual transmitted Infection). He was then taken to [Particulars withheld] police station where he was charged with the present offences.
11. There are two major ingredients from which the offence of defilement arises. These are penetration and the age of the alleged victim. The establishment and proof of the two ingredients would inevitably bring into the fore the third ingredient of the offence i.e. the identity of the alleged offender.



12. As` regard, the ingredient or element, of age, the prosecution evidence indicating that the complainant (Pw1) was a minor aged seventeen (17) years at the material time was largely if not wholly undisputed in as much as it was established and proved by the complainant’s testimony corroborated by that of the clinical officer (Pw4) and most importantly by the birth certificate (P.Exhibit 1 (a).
13. As regards the element of penetration the complainant (Pw1) stated that she was subjected to four episodes of defilement inside the house of a “stranger” where she was forcefully and threateningly taken. However, the evidence by Carolyne (Pw2) suggested that the complainant followed the stranger into his house voluntarily without any form of force or threat. Nonetheless, force and threats are not elements of defilement neither do they prove the element of penetration.
14. The fact that the complainant was defiled was not at all or substantially disputed by the defence and was in any event established by the complainant’s own testimony duly corroborated by the medical evidence tendered by the clinical officer (Pw4). The medical report (P3 form – (P.Exhibit 3) showed that there was recent penetrative sexual act marked by the presence of epithelial cells in the complainants genitalia even through it was apparent that the complainant was a sexually active minor prior to what befell her on the material date which in effect was a criminal offence whether or not she consented to the sexual act with the male accomplice being the offender.
15. The prosecution evidence having been cogent in establishing the elements of age and penetration was ultimately required to prove beyond any reasonable doubt that the Appellant was the person who actually defiled the complainant. Other than the complainant, no other person was availed to pinpoint the Appellant as the offender. In that regard, the complainant’s evidence was the sole evidence of identification against the Appellant. It was evidence of a single witness which required corroboration unless it was believable by the court in terms of Section 124 *Evidence Act*.
16. In the Trial Courts impugned judgment it is apparent that the complainants evidence on identification of the Appellant as the offender was treated as being truthful and believable without necessarily the mention of Section 124 *Evidence Act*. This could be deciphered from the following segment of the impugned judgement.

“ on the element of identification of the perpetrator, Pw1 positively identified the alleged accused person as the one who defiled her. She vividly narrated how he accosted her from a stage at brook area of Kericho and instead of dropping her at Shivilings Supermarket Kericho he took her to a house at [Particulars withheld] area”.
17. The Trial Court considered the evidence of Carolyne (Pw2) as having been sufficient corroboration of the complainant’s evidence on the identification of the Appellant in as much as she (Pw2) who was the Appellant’s neighbour saw the Appellant come into his premises with the minor complainant and shortly thereafter the minor screamed saying that she has been assaulted and much later fled from the Appellant’s house into Carolyne’s (Pw2) saying that she had been raped.
18. Indeed, the fact that it was the Appellant, who was seen entering his house with the complainant was sufficient corroborative evidence indicating that most likely that not it was the Appellant who defiled the complainant. The Trial Court believed the complainant with or without corroboration of her evidence of identification by Carolyne (Pw2) having seen and heard the witnesses, the Trial Court was in a better position to make findings based on the credibility of the witnesses.



19. And having done so, the defence raised by the Appellant was treated as having been made of falsehoods and an afterthought. This court is thus in agreement with the conclusion reached by the Trial Court with regard to the identification of the Appellant to wit;

“There is as observed above overwhelming evidence by the state that the accused person is the one who defiled the complainant. The evidence identifying him remains unchallenged both in cross examination and in defence. It is therefore in my considered opinion, proved that the accused is the person who caused penetration of the complainant who is evidently a minor aged 17 years.”

20. In sum, all the necessary ingredients of the offence of defilement were proved beyond any reasonable doubt by the prosecution. The Appellant’s conviction by the Trial court was therefore lawful, sound and safe and is hereby affirmed. The sentence of fifteen (15) years imprisonment imposed by the Trial Court was lawful and in tandem with Section 8(4) of the *Sexual Offence Act* which provides for such minimum sentence for which the Trial Court had no discretion.

21. However, consideration being given to the circumstances of the case, the fact that the complainant was a few months’ shy of attaining the age of majority and was already a sexually active individual who may have been a willing or unwilling participant of the offence, the fifteen years’ imprisonment was rather excessive for a repentant first time offender. In that regard, this court considers it fit, just and fair to reduce the sentence to seven and a half (7½) years imprisonment. The fifteen years imprisonment is thus set aside and substituted accordingly.

**J.R. KARANJAH**

**JUDGE.**

**DATED AND DELIVERED THIS 29<sup>TH</sup> DAY OF JANUARY, 2025.**

**J.R. KARANJAH**

**JUDGE.**

In presence of:

M/s Kirui for the Appellant.

Masisa State Counsel

Appellant. Present

Magwa Court Assistant.

