



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maritim v Republic (Criminal Appeal E032 of 2022)  
[2025] KEHC 3795 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3795 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL APPEAL E032 OF 2022  
JK NG'ARNG'AR, J  
MARCH 27, 2025**

**BETWEEN**

**KENNEDY KIPKOECH MARITIM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the Conviction and Sentence in Sexual Offence Case Number E028  
of 2021 by Hon. Kibelion K. in the Principal Magistrate's Court in Bomet)*

**JUDGMENT**

1. 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*. The particulars of the charge were that on 4th July 2021 at [Particulars Withheld] in [Particulars Withheld] Location within Bomet County, the Appellant intentionally caused his penis to penetrate the vagina of S.C, a child aged 13 years.
2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on 4th July 2021 at [Particulars Withheld] in [Particulars Withheld] Location within Bomet County he intentionally touched the vagina of S.C, a child aged 13 years with his penis.
3. The Appellant pleaded not guilty to the charges before the trial court and a full hearing was conducted. The prosecution called six (6) witnesses in support of its case and the Appellant gave sworn testimony and did not call any witness.
4. In a Judgment dated 4th August 2022, the trial court convicted the Appellant of the charge of defilement contrary to section 8(3) of the *Sexual Offences Act*. The Appellant was sentenced to serve 20 years' imprisonment.



5. Being aggrieved with the Judgment of the trial court, the Appellant, Kennedy Kipkoech Maritim through an undated home-made Petition of Appeal appealed against his conviction and sentence on the following grounds reproduced verbatim: -
  - I. That the learned trial Magistrate erred in law and fact by failing to analyze the entire evidence adduced by the Prosecution and that the evidence did not meet the required legal standard.
  - II. That the sentence was excessive and a misdirection of the law.
6. The Appellant filed further grounds of Appeal to wit:-
  - I. That the learned trial Magistrate erred in law and fact by acting on the wrong principles and overlooked material facts when sentencing him.
  - II. That the learned trial Magistrate erred in law and fact by failing to consider his mitigation.
7. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh. This duty was succinctly stated by the Court of Appeal in *Njoroge v Republic* [1987] KLR 19 where it held: -

“As this court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well as on the questions of facts as on questions of law, to demand a decision of the court of the first appeal, and that court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and to make due allowance in this respect.....”
8. I now proceed to consider the case before the trial court and the respective parties’ submissions in the present Appeal in the succeeding paragraphs.

#### **The Respondent’s/ Prosecution’s Case.**

9. It was the Respondent’s case that the Appellant defiled S.C (PW1). PW1 testified that the Appellant pulled her in their neighbour’s ([Particulars Withheld]) kitchen and defiled her. PW1 further testified that she screamed and her mother (PW2) found the Appellant defiling her.
10. No. [particulars withheld] Deborah Ajah Epili (PW6) testified as the Investigating Officer. She stated that after the offence had been reported to the police station, she arrested the Appellant and took the Appellant and the victim (PW1) to hospital where it was confirmed that PW1 had been defiled.
11. Paul Sigei (PW5) a clinical officer at [Particulars Withheld] Hospital testified that he examined PW1 and found that her external genitalia were swollen. He further testified that PW1 had a whitish vaginal discharge and an old torn hymen. It was PW5’s conclusion that PW1 had been defiled due to the swelling of her genitalia, a torn hymen and presence of epithelial cells which indicated friction.
12. In their written submissions filed on 3rd December 2024, the Respondent submitted that the victim was aged 12 years and the same was confirmed by the production of her Birth Certificate. The Respondent further submitted that they proved penetration. That the victim’s testimony was corroborated by the medical examination report and the PRC Form and further that the clinician noted that the victim had bruising on her neck which indicated the use of force in the commission of the offence.
13. In regards to the identification, the Respondent submitted that the victim’s mother (PW2) found the Appellant in the act and further identified the Appellant as her neighbour’s employee. That the



Appellant was properly identified as the perpetrator. The Respondent submitted that the sentence issued was legal, proper and valid.

### **The Appellant's/Accused's Case**

14. The Appellant, Kennedy Kipkoech Maritim denied committing the offence. He testified that PW2 had a grudge with his employer and this led to his arrest by Nyumba Kumi officials.
15. In his written submissions filed on 9th November 2023, the Appellant submitted that after reviewing the Prosecution's case, it was his view that the evidence was overwhelming and he did not wish to contest the merits or demerits of his conviction. He further submitted that even though the sentence was legal, it was excessive.
16. It was the Appellant's submission that he regretted committing the offence and prayed for leniency. That this court had the discretion to impose a lesser sentence. It was his submission that the long sentence had jeopardised his chances of settling down and starting a family.
17. The Appellant submitted that he admitted making the mistake and asked this court for forgiveness and a lenient sentence.
18. I have gone through and considered the trial court's proceedings, the undated Petition of Appeal, the Appellant's written submissions filed on 9th November 2023 and the Respondent's submissions filed on 3rd December 2024. From the Appellant's submissions, it was clear that he did not contest his conviction but wanted this court to reduce his sentence. Therefore the only issue for my determination is whether the sentence is harsh.
19. The penal section for this offence is found in section 8(3) of the *Sexual Offences Act* which states 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.
20. In meting out a sentence, this court is guided by the objectives of sentencing as set out in law and various legal texts. The *Sentencing Policy Guidelines* 2023 outlines the objectives of sentencing at paragraph 1.3.1 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Community Protection.
- vi. Denunciation.
- vii. Reconciliation.
- viii. Reintegration.



21. I have considered the circumstances of the case and the Appellant's submissions on the length of his sentence. It was clear that the Appellant broke the law by having sexual intercourse with an underage girl whose naivety he clearly took advantage of. He deserves the sanction of the law.
22. That said, it is my view that a long jail term would in the circumstances neither be useful nor meet the ends of justice. Consequently, I find it just and fair to interfere with the sentence.
23. I hereby reduce the sentence from twenty (20) years to fifteen (15) years imprisonment. In accordance to section 333(2) of the *Criminal Procedure Code*, the sentence shall run from 4th July 2021 being the date of his arrest and pre-trial custody.

**JUDGEMENT DELIVERED, DATED AND SIGNED THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**J.K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of the Appellant, Njeru for the Respondent and Susan (Court Assistant).

