



REPUBLIC OF KENYA



KENYA LAW
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**Wahome v Republic (Criminal Appeal 4 of 2023)
[2025] KEHC 3760 (KLR) (Crim) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 4 OF 2023
KW KIARIE, J
MARCH 26, 2025**

BETWEEN

JOSEPH KARUGA WAHOME APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in S. O. Case No.176 of 2017 of the Chief Magistrate's Court at Nyabururu by Hon. S.N. Mwangi– Senior Resident Magistrate)

JUDGMENT

1. Joseph Karuga Wahome, the appellant herein, was convicted of the offence of defilement of a boy contrary to section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence were that on the 28th day of October 2014, at Weru location within Nyandarua County intentionally caused his penis to penetrate the anus of J.N., a child aged thirteen years.
3. The appellant was sentenced to twenty years imprisonment. He has appealed against both conviction and sentence. He was in person and raised the following grounds of appeal:
 - a. The trial magistrate erred in law and fact by not considering that all ingredients of the offence as charged were not proved.
 - b. The trial magistrate erred in both law and fact by failing to consider seeking expert opinion on the complainant's age.
 - c. The trial magistrate erred in law and fact by not considering that there was no forensic evidence, e.g., a DNA test, to link the appellant with the commission of the offence.



- d. The trial magistrate erred in law and fact by not considering grave contradiction and inconsistent evidence adduced in court by the prosecution.
 - e. The trial magistrate erred in law and fact by not considering that no corroborating evidence was adduced in court to support this case.
 - f. The sentence is harsh.
4. The state opposed the appeal through E.P.O Omoria, prosecution counsel. It was contended that the prosecution proved its case to the required standards and that the appeal lacked merit.
 5. This court is an appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses testify. Therefore, I will follow the well-known case of *Okeno vs Republic* [1972] E. A 32 to guide my decision-making process.
 6. Section 8(1) of the *Sexual Offences Act* defines defilement in the following terms:

A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

An offence of defilement, therefore, 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 when Joel Ngugi J. said:

Going by this definition of defilement, I agree with Mr. Mwenda on the issues the court needs to determine. The 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.

These are the ingredients that the prosecution must prove against an accused person.

7. The baptismal card indicates the complainant was born on the 21st day of March 2001. However, the PRC form lists his birth date as June 10, 2001. Although there was a discrepancy in the month he was born, as of October 2014, he was between 12 years and 5 months and 12 years and 8 months old. Section 8 (3) of the *Sexual Offences Act* provides:

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.
8. The discrepancy in the date was not prejudicial to the appellant.
9. T.W.N. (PW1) is the complainant's grandmother. She testified that Joseph Kabugu informed her that he found the appellant sodomising the complainant. At the time of the trial, he had unfortunately passed away.



10. The complainant has a speech impediment, but he implicated the appellant in his evidence, apparently through an intermediary. The proviso to section 124 of the *Evidence Act* states:

Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

11. When the complainant was taken to the hospital, he was examined by Clinical Officer Peter Nginyo (PW4). He noted that the complainant was mentally challenged and exhibited tenderness at the anal opening, which was injured. This evidence corroborated the complainant's evidence of penetration.
12. Joseph Karuga Wahome, the appellant, argued that he was falsely implicated when he went to demand his money but did not state by whom. He further argued that no DNA analysis had been conducted.
13. DNA analysis would not have been necessary in this case. The appellant's defence did not displace the prosecution case.
14. The appellant was sentenced to the prescribed punishment, and he may argue that it is harsh; however, it is commensurate with the offence.
15. The appeal lacks merit and is therefore dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 26TH DAY OF MARCH 2025.

KIARIE WAWERU KIARIE

JUDGE

