



REPUBLIC OF KENYA



KENYA LAW
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**Kiplangat v Republic (Criminal Appeal E40 of 2022)
[2025] KEHC 5544 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E40 OF 2022**

JR KARANJA, J

APRIL 30, 2025

BETWEEN

GEOFFEY BETT KIPLANGAT APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant, Geoffrey Bett Kiplangat, appeared before the Resident Magistrate at Kericho facing a charge of defilement, contrary to Section 8 (1) read with Section 8 (3) of the [Sexual Offences Act](#). It was alleged that on the 14th June, 2015 at around 1900 hours at Kericho county, the Appellant caused his penis to penetrate the vagina of IC, a child of the age of fourteen (14) years.
2. After trial, the Appellant was convicted and sentenced to fifteen (15) years imprisonment, but being dissatisfied with the sentences the Appellant preferred the present appeal on grounds set out in the petition as of appeal as amended and annexed to the Appellants written submissions which were fully relied upon by the Appellant in support of the appeal which was opposed by the state/Respondent on the basis of the grounds and reasons contained in its written submissions.
3. The Appellant's major complaint was that the trial court erred in law and fact by convicting him on the basis of the prosecution evidence which was insufficient and failed to prove the ingredients of age and penetration necessary for purposes of proving the charge of defilement. Whereas the Appellant prayed for the appeal to be allowed, the Respondent prayed for its dismissal.
4. At the hearing of the appeal which was by way of written submissions, the Appellant appeared in person while the learned prosecution counsel M/s Chomba, appeared for the state/Respondent.

This court having duly considered the appeal on the basis of the supporting and opposing grounds, as well as the rival submissions and having reconsidered the evidence adduced against the Appellant by the five (5) or six (6) prosecution witnesses together with the Appellant's evidence in defence while hearing



in mind that the trial court had the advantage of seeing and hearing the witness, is of the opinion that the issue which arose for determination by the trial court was whether the complainant (Pw1) was defiled and if so, whether the Appellant was the person responsible for the unlawful act.

5. In its judgment, the trial court having considered the evidence in its totality arrived at the conclusion that the prosecution case had been proved against the Appellant beyond any reasonable doubt. The Appellant was therefore convicted and sentenced accordingly.
6. Basically, a person who commits an act which causes penetration with a child is guilty of the offence termed defilement (Section 8 (1) Sexual Offence Act.

Under Section 2 of the Children's Act, a child means a human being under the age of eighteen (18) years and under Section 2 of the *Sexual Offences Act*, Penetration means the partial or complete insertion of the genital organ of a person into the genital organs of another person.
7. The vital ingredients of the offence of defilement therefore include the age of the child victim and the fact of penetration. A third ingredient would be the identity of the alleged offender. The evidence by the prosecution witnesses through the complainant (Pw1) showed that she was of the age of fourteen (14) at the material time of the offence. This was somehow supported by the police medical form P3 (P exhibit 1) which indicated that the complainant was indeed fourteen (14) years of age.
8. However, the complainant's mother (Pw3) did not confirm the complainant's age to be fourteen (14) at the material time. She didn't even inform the court the complainant's date of birth, neither did she avail any documentary evidence such as a birth certificate or a birth registration certificate for purposes of confirming the complainant's stated age of Fourteen (14) years.
9. The age assessment report (P.exhibit 4) produced in court by the investigations officer (Pw5) showed that the complainant was of the age of sixteen (16) years as at the time of the assessment on 22nd August, 2016. The medical officer who examined the complainant and compiled the report, one Robert Kipyegon Langat, did not testify in court to confirm that he was the author of the report and clarify whether the age of sixteen (16) was the complainant age at the time of the alleged offence or at the time of her examination for purposes of the report.
10. The trial court in its judgement captured the investigating officer (Pw6) (sic) Cpl. Rose Mwangi as having stated that the complainant was of the age of sixteen (16) years at the material time of the offence. Eventually, the trial court also captured the complainant as having stated that she was sixteen (16) years old at the time of the offence and that the age assessment report was produced by the clinical officer rather than the investigation officer.
11. The actual medical officer who prepared and signed the age assessment report and who was supposed to produce it in court as evidence did not testify in court. Age of the victim of a sexual assault under the *sexual offences Act* is a critical component of the offence of defilement as it forms part of the charge which must be proved beyond reasonable doubt just like the components of penetration and identity of the alleged offender.
12. It was therefore essential that the prosecution lead credible evidence to prove age of the complainant at the material time of the offence. Given the contradictions and inconsistency in the age of the complainant as may be deciphered from the prosecution evidence it is the opinion of this court that the ingredient of age of the complainant was not established and proved beyond reasonable doubt in this case.
13. With regard to penetration, apart from the evidence of the complainant (Pw1) there was no other cogent and corroborating evidence in that regard. The evidence by the clinical officer (Pw4) was non-committal as to whether an act of penetration was committed against the complainant as alleged on



the material date and time. The p3 form (P exhibit 1) alluded to there being no unusual observations on the complainant's genitalia and also to an attempted rape rather than defilement.

14. In his testimony, the clinical officer (Pw4) indicated that the complainant was asexually active minor and categorically stated that he had nothing to link the Appellant with the alleged offence of defilement. Although the complainant stated that she was defiled on the material date by the Appellant the contradictions and inconstancies in her evidence did cast doubt on the credibility of her evidence which in the circumstances needed cogent and credible corroboration for it to be believed.

15. The trial court seemingly believed the complainant and was entitled to do so even in the absence of corroboration in terms of Section 124 of the Evidence Act, but the court did not give reasons why it thought that the complainant was a credible witness.

It would follow from the foregoing that the ingredient of penetration was also not proved against the Appellant beyond reasonable doubt. He may have been known to the complainant and they may have been together in his house on the material date but this could not amount to a presumption that the complainant was at the time a child and that an act of penetration was committed against her by the Appellant simply because she went to her house very late in the night and made a report to her mother. The possibility of lying to her mother was not remote.

16. In essence, the failure by the prosecution to prove the ingredients of age and penetration meant that the Appellant did not defile the complainant or that the offence of defilement was not proved against him. In the circumstance, the Appellant's conviction by the trial court was neither sound nor safe and is hereby quashed to the extent that the fifteen (15) years imprisonment imposed on the Appellant is hereby set aside.

17. In sum the present appeal succeeds in its entirety. The Appellant shall forthwith be set at liberty unless otherwise lawfully held.

18. Ordered accordingly.

J.R. KARANJAH

JUDGE.

DATED AND DELIVERED THIS 30TH DAY OF APRIL, 2025.

In the presence of:-

M/s Chomba state counsel

Appellant. Present in person.

Simon court assistant.

