



**Juma v Republic (Criminal Appeal E023 of 2023)
[2025] KEHC 4843 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E023 OF 2023**

**DK KEMEL, J
APRIL 25, 2025**

BETWEEN

CHARLES OLUOCH JUMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgment of Hon.L.N. Sarapai (PM)
delivered on 25/4/2023 in Sexual Offences Case No. 038 of 2021)*

JUDGMENT

1. The Appellant herein Charles Oluoch Juma was charged before the trial court with the offense of defilement contrary to section 8(1) (2) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars of the offence are that on the 17th Day of November 2017 at Ugenya Sub-county within Siaya County intentionally caused his penis to penetrate the vagina of one M.A. a child aged eight years.
2. The Appellant also faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#). The particulars are that on the 17th Day of November 2021 at Ugenya Sub-County within Siaya County intentionally touched the vagina of M.A. a child aged eight years with his penis.
3. The Appellant denied the charges and after a full trial he was convicted and sentenced to imprisonment for life.
4. Aggrieved, the Appellant has appealed to this Honorable Court against both the conviction and sentence on the following grounds:
 - i. That the sentence imposed is harsh and excessive.



- ii. That the prosecution failed to prove its case beyond any reasonable doubt and that the conviction went against the evidence adduced.
- iii. That the judgment was contrary to the law since it does not meet the requirements of section 169 of the Criminal Procedure Code.
- iv. That the trial court failed to observe that the prosecution witnesses' evidence fell short of the standard required for proof of the offence.
- v. That the trial magistrate failed to consider the Appellant's defense.

Reasons wherefore the Appellant prayed that the appeal be allowed, conviction quashed, and the life sentence set aside.

5. This being a first appeal, this Court must re-consider and re-evaluate the evidence adduced before the trial Court to arrive at its independent findings and conclusions. (See *Okeno vs. Republic* [1972] EA 32). In doing so, this Court is required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court and, therefore, it ought to make due allowance in that respect as was held in *Ajode v. Republic* [2004] KLR 81.

6. M.A.(PW1) gave a sworn statement after a *voire dire* examination by the trial magistrate. That she is eight years old and a pupil at [Particulars Withheld] primary school. That on 17th November 2021 at about 4.00pm she was taking a bath behind their house when the Appellant went and asked her to follow him to his house so that he can give her 'Sukari Nguru' (juggery). The poor child complied. That at his house he removed her skirt and underpants, then he removed his pair of shorts that he wore. The minor then narrated that the Appellant removed the thing that he uses to urinate and inserted it in her thing that she uses to urinate. That thereafter, the Appellant gave her the Sukari Nguru and a banana. The Appellant then threatened to bury her where she would not be found should she tell anyone.

That a few days later, as she came from school the minor informed her mother that her buttocks were paining. Upon her mother examining her private parts, she inquired from her on the person who had done that to her but she remained silent. After a stroke of canes, she disclosed that it was Oluoch who had done it. That the mother went to confront Oluoch and reported the incident to the minor's grandfather. During cross examination, the minor confirmed that the Appellant gave her 'Sukari Nguru' and banana at his house and that he removed his underpants and slept with her and that the incident took place at 4.00 pm during the day. That Oluoch is their neighbor and she recognized him at the dock.

7. RA (PW2), a minor testified after a *voire dire* examination that she is aged 12 years old and a pupil at [Particulars Withheld] Primary school in class four. That the complainant is her sister. That she recalls the 17/11/2021 when her sister was raped by Oluoch. That she was not there when the incident took place as she was informed by her mother when she came from school. That they took the complainant to hospital and then to Kanyumba police station. That Oluoch is their neighbour and that she has seen him in court.

On cross-examination, she stated that she did not see the Appellant sleeping with her sister and that she does not know if her mother attacked him with a panga.

8. RAO (PW3) testified that on 24th November 2021 as she was resting in her house she heard her daughter (PW1) calling her and who informed her that she was feeling pain in her private parts. She asked the minor to remove all her clothes and bend. When she bent, her private parts were red and had a pus like discharge. Upon inquiring from her about the identity of the perpetrator, she kept quiet but later after she caned her, she claimed that it was Oluoch who had done it.



That she confronted Oluoch who is their neighbor and who claimed that it was the devil that cheated him to do that to the minor. That she informed their father (grandfather to the minor) who directed her to take the minor to hospital which she did. That she took her to Bar Ndege dispensary. She also reported to the police at Kanyumba police station. Later, with the assistance of officers from Kanyumba police, they took the minor from her school to Ukwala sub county hospital where an age assessment was carried out and a report presented as PMFI -1. A P3 form was also filled and which was marked as PMFI-2. PRC form from Bar Ndege dispensary marked as PMFI 3.

On cross examination, she stated that she had upon asking the Appellant about the allegation by the minor, the Appellant had said that it was the devil who came over him to spoil her child. That the Appellant asked her to name her price so that she does not report him to the authorities.

9. No.2559900 PC Nancy Kwamboka (PW4) was the Investigation officer in the matter. She stated that she took over the matter from PC Nderitu after three witnesses had testified. That a defilement case was reported on 24th November 2021 by the minor complainant (M. A.) in the company of her mother Rosemary Auma (PW3). That the complainant had been defiled by a person well known to her and was known as Oluoch.

That a P3 form was issued and filled at Ukwala Sub County Hospital. That the Appellant was later arrested at Tingolo in Busia county where he was hiding. That he was escorted to Kanyumba police post and charged accordingly. That the complainant's age assessment report shows her as eight years old. She produced the same as exhibit 1.

On cross examination, she stated that she was not involved in the arrest and that the Appellant was charged with defilement.

10. Margaret Juma (PW5) stated that she is No. 15490 and works at Ukwala sub county hospital. She filled the P3 Form based on the PRC form which was filled at Bar- Ndege. That she filled the P3 form on 30/11/2021 about thirteen days after the incident. That the probable weapon was a penis. He filled the form and classified the injury as harm. She produced it as exhibit 4(a). On cross-examination, she stated that she did not witness the incident and that the child did not come with stained clothes.
11. Ogola Naftaly (PW6) a registered clinical officer currently serving at Bar-Ndege hospital. That he examined the minor on 24/11/2021 at about 16;15 pm. at Bar-Ndege dispensary as per the OPD No. 7014/2021. That upon examination of the minor, she had fresh bruises at her outer genitalia. That the inner genitalia was inflamed showing infection. That the vagina had virulent foul-smelling yellowish discharge which was abnormal and not appropriate of a child of that age. That the hymen was distorted and not intact. That he found the injuries to be as a result of forceful penile penetration. That the child referred to trauma counselling. That the PRC form was signed on 24/11/2021 and that he produced it as exhibit 3.
12. After the close of the prosecution's case, the court placed the Appellant on his defence.
13. Charles Oluoch (DW1), the Appellant herein chose to give an unsworn statement where he stated that he did not sleep with the minor and that those were mere fabrications against him.
14. The appeal was canvassed by way of written submissions. Both parties duly complied. The Appellant submitted that the sentence was unconstitutional and that the trial magistrate over punished him. He submitted further that he was given a mandatory sentence which limits the discretion of the judicial officer. He placed reliance on the case of Malindi Criminal Appeal No. 12 of 2021 Julius Kitsao Manyeso vs. Republic.



15. The Respondent on the other hand submitted that it had established and proved all the elements of defilement beyond reasonable doubt as by law required. On the element of age, it submitted that exhibit 1 was the age assessment report which showed that the minor was eight years old at the time of the incident. On penetration, the Respondent submitted that the same need not be complete but partial penetration would also suffice. That PW6 stated that on examination of PW1 she had bruises on the outer genitalia, vagina walls were inflamed and the hymen was distorted and not intact. This showed that penetration was proved. On the aspect of identification, the Respondent submitted that the Appellant was known to both PW1 and PW2 thus this was a matter of recognition and not identification. The Respondent concluded that the sentence was not harsh as alleged by the Appellant but that the same is commensurate with the offence and that the same should be upheld.
16. I have considered the evidence tendered in the lower court as well as the submissions. I find the issue for determination is whether the Respondent proved its case against the Appellant beyond any reasonable doubt.
17. It is noted that the Appellant was charged under section 8(1) and 8(2) of the *Sexual Offences Act* No. 3 of 2006 which provides as follows:
 - “(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life”
18. The elements requisite for the proof of defilement are age of the complainant, penetration of the genitalia and the identity of the perpetrator.
19. On the age, the age assessment report was produced as exhibit 1 and it indicated that the complainant was eight years old at the time of the offence. The said age confirmed that the complainant was a child within the meaning of section 2 of the *Children Act* 2001 which places minors as person below the age of 18 years old. The age of the victim in sexual offences is a very critical component as it is the yardstick during sentencing. The Act has given the range of ages of the victims and the attendant periods of imprisonment. I find that the Respondent proved this ingredient beyond any reasonable doubt.
20. On the aspect of penetration, section 2 of the *Sexual Offences Act* defines the same as “the partial or complete insertion of the genital organ of a person into the genital organ of another person”. In this case, the evidence of the clinical officer who examined the victim is clear. PW6 stated that upon examination of the complainant (PW1), the vagina had a foul-smelling yellowish discharge which was abnormal and not appropriate of a child of that age. That the outer genitalia had bruises while the inner genitalia were inflamed as a sign of infection and that the hymen was distorted and not intact. He formed an opinion that the injuries were as a result of forceful penile penetration. I find that there was sufficient proof of penetration and that the Respondent proved the said ingredient beyond any reasonable doubt.
21. Lastly on the element of identification of the perpetrator, the Appellant was well known to PW1 and PW3 as he was their neighbor. The incident took place around 4 PM and that the complainant did give a vivid account of how the incident took place. The complainant had known the Appellant so well and thus there was no issue of mistaken identity. This was thus not a question of identification but that of recognition. Indeed, the complainant later revealed to her mother the person who had defiled her as the Appellant who was their immediate neighbour and that her mother confronted the Appellant who confirmed to her that the devil had misled him to molest the child and that he sought for forgiveness



or that the mother of the minor to name a price to be paid as compensation. The Appellant's defence claim that he had been framed did not dislodge the overwhelming evidence against him. I am satisfied that the Appellant was placed at the scene of crime as the perpetrator. I find this ingredient was proved beyond any reasonable doubt.

22. I am satisfied that all the elements of the offence were well proved beyond reasonable doubt against the Appellant herein. I am also satisfied that the trial magistrate considered the defence of the Appellant contrary to the Appellant's claim that the defence was not considered. I find the conviction arrived at by the learned trial magistrate was quite sound and must be upheld.
23. As regards sentence, section 8(2) of the Sexual Offences Act provides a sentence of life imprisonment upon conviction. The Appellant has claimed that the sentence imposed by the trial court is excessive. I find that the said sentence is in line with section 8(2) of the Sexual Offences Act No. 3 of 2006 which provides for life imprisonment as a punishment for convicted Sexual offenders for defilement of a child under the age of 11 years. Even though the Appellant is aggrieved by the same, it must be noted that his actions have caused immense trauma to the complainant who was a young child and that her life has been turned upside down and scarred for the better part of her life. The Appellant who was an adult and neighbour was expected to protect the child but not to become a predator. The child had trusted him only for him to turn against her. I find the sentence imposed is commensurate with the moral blameworthiness of the Appellant. Further, in *Petition No. 18 of 2023 Republic Vs Joshua Gichuki Mwangi and Others* [2023] eKLR, the Supreme Court held that trial courts do not have jurisdiction to interfere with minimum sentences under the Sexual Offences Act as long as the said Act has not been amended or declared unconstitutional. I find the sentence imposed is the minimum possible in law.
24. In the result, I find that the Appellant's appeal is devoid of merit and that the same is dismissed.

DATED, AND DELIVERED AT SIAYA THIS 25TH DAY OF APRIL, 2025.

D. KEMEI

JUDGE

In the presence of:

Charles Oluoch Juma.....Appellant

Mocha.....for Respondent

Mboya.....Court Assistant

