



**Gichiang'a v Republic (Criminal Appeal E006 of 2025)  
[2025] KEHC 7353 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL E006 OF 2025  
JK NG'ARNG'AR, J  
MAY 28, 2025**

**BETWEEN**

**PETER MURIUKI GICHIANG'A ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The appellant Peter Muriuki Gichiang'a faced a raft of charges. He was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#). The particulars of the offence were that on 23<sup>rd</sup> June 2022 and 24<sup>th</sup> June 2022, at Mwea East sub county within Kirinyanga County, the appellant intentionally caused his penis to penetrate the vagina of BWM a child aged 10 years. In the alternative, the appellant was charged with the offence of committing an indecent act contrary to section 11 (1) of the [Sexual Offences Act](#). The particulars of the offence were that 23<sup>rd</sup> June 2022 and 24<sup>th</sup> June 2022, at Mwea East sub county within Kirinyanga County, the appellant intentionally touched the vagina of BWM a child aged 10 years with his penis.
2. The appellant faced a second count of defilement contrary to section 8 (1) as read with section 8 (3) of the [Sexual Offences Act](#). The particulars of the offence were that on 23<sup>rd</sup> June 2022 and 24<sup>th</sup> June 2022, at Mwea East sub county within Kirinyanga County, the appellant intentionally caused his penis to penetrate the vagina of EWM a child aged 12 years. He faced an alternative count of committing an indecent act. The particulars of the offence were that on the same day and in the same place, the appellant intentionally touched the vagina of EWM a child aged 12 years with his penis.
3. The appellant pleaded not guilty to all counts when arraigned to take plea. After full trial, the appellant was convicted of the main offences. He was sentenced to life imprisonment. It is these findings that have precipitated the filing of this appeal. The appellant filed his petition of appeal dated 31<sup>st</sup> January 2025. He prayed that his appeal be allowed in light of the following reasons: the ingredients to the offence



of defilement were not proved beyond reasonable doubt; and the prosecution's case was marred with contradictions rendering the conviction unsafe.

4. The appeal was heard on the strength of the parties diametrically opposed written submissions. The appellant's written submissions dated 11<sup>th</sup> March 2025 submitted that the charge sheet was defective as it failed to set out that the alleged acts were unlawful. He continued that he was detained in custody for more than 24 hours when he was arrested on 29<sup>th</sup> June 2022; a breach of Article 49 (1) (f) of *the Constitution*. He posited that crucial witnesses, namely N and J, were not called to testify rendering the evidence of the prosecution unreliable.
5. On the ingredient of penetration, the appellant challenged that the absence of a hymen was not conclusive proof of defilement. He added that in any event, the age of the broken hymen was not disclosed rendering the medical evidence inclusive. He submitted that since no age assessment was furnished in evidence regarding the two minors, the age of the minors was not established beyond reasonable doubt. He continued that not only was his cogent defence not considered, but also, he was not informed of his right to legal representation. This amounted to a violation of Article 50 (2) (g) of *the Constitution*. Finally, on sentence, he submitted that it was harsh and excessive. He prayed that his appeal be allowed.
6. Opposing the appeal, the respondent filed its written submissions dated 17<sup>th</sup> March 2025 to submit that it had proved that the appellant committed the offences it was convicted of to the required standard of proof being beyond reasonable doubt. On whether there were material contradictions in the evidence tendered by prosecution, the respondent submitted in the negative. It prayed that the appeal be dismissed.
7. This Court's duty as a first appellate court was enunciated by the Court of Appeal in the case of Mark Oiruri Mose vs. Republic [2013] KECA 67 (KLR) that held as follows:

“It has been said over and over again that the first appellate court has the duty to revisit the evidence tendered before the trial court, afresh analyse it, evaluate it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and to give allowance for that. The well-known case of Okeno vs Republic (1977) EA 32 which sets out that principle has been referred to in several decisions of this Court and of the High Court.”
8. The facts as captured in the record before me are as follows: PW1 EW, one of the complainants, was a class six student at [Particulars Withheld] Her evidence was that the appellant introduced himself to PW1 and PW2 BW as Mnoma. One Thursday morning, PW1 recounted that she was on her way home at around 7:00 a.m. She was accompanied by her sister PW2. Suddenly, the appellant appeared and accosted them. He then took them to his place. He asked them to lie on the bed. He then removed his clothes and PW1's clothes and sexually assaulted her. After he was done with PW1, he did the same thing to PW2.
9. After the ordeal, the appellant cautioned them against telling anyone. PW1 and PW2 dressed up and left the appellant's house. They went home. The following day, the appellant repeated the offence. It was BK who eventually told their mother. PW1 was later treated at Kimbimbi Hospital. The appellant was subsequently arrested and charged. She denied that she had framed the appellant.
10. 10-year-old PW2 BW, the second complainant, stated that she was born in 2012. She was on her way to school in the company of PW1, her sister. At 4:00 p.m., they left school and were heading home.



The appellant suddenly appeared asking them to go with him to his house. He gave them mangoes and locked the house. They were ordered to remove their clothes and lie on the appellant's bed. PW2 removed her panties, the appellant removed his trouser and sexually assaulted her after he did the same thing to PW1. She felt pain. After he was done, he lured PW2 with Kshs. 50.00 and Kshs. 5.00 and PW1 with Kshs. 20.00 warning them not to tell anyone. PW2's evidence was that Mary N, a schoolmate informed their parents about what had transpired. The said Mary N also informed their teacher Mr. J who alerted the police. She was later treated at Kimbimbi Hospital.

11. PW3 Omondi Francis Owino, a clinician at Kimbimbi Hospital recalled that on 29<sup>th</sup> June 2022, PW2 was brought to Hospital by a police officer. She was brought to the facility one week after she had been defiled on 23<sup>rd</sup> June 2022. On examination, PW3 observed that her hymen was old torn and was absent. PW2 was put on antibiotics as she had developed a urine infection. He filed the treatment notes, P3 form and PRC form which were produced in evidence. On the same day, PW3 also examined PW1 who had also been defiled the same day as PW2. He observed that her hymen was torn and missing. She was administered with antibiotics as she had caught an infection. He filled the P3 form, PRC form and the treatment notes that were all adduced in evidence.
12. PW4 Mercy Muthoni, a teacher at [Particluards Withheld] testified that on 20<sup>th</sup> June 2022, during the school lunch break, one student called M approached her and disclosed to her that PW1 and PW2 did not reach home. That they had passed by the appellant, a habit that became customary. The matter was escalated to the headteacher PW6 who had sent them away on 23<sup>rd</sup> June 2022 because of school fee arrears. The complainants informed that that the appellant would have sexual intercourse with them and thereafter give them money. The headteacher notified the complainants' parents and the area chief.
13. PW5 Julia Ndiritu, a teacher at [Particluards Withheld] recalled that a student called M informed them that PW1 and PW2 had been repeatedly sexually assaulted by the appellant in exchange for money. They informed the deputy headteacher PW6 who interrogated them. The complainants then disclosed what had transpired. PW6 called the sub chief who asked the complainants to bring their parents to school the following day.
14. PW6 Njora M. Jonah testified that he worked at [Particulars Withheld] On 28<sup>th</sup> June 2022, he was in school when PW4 and PW5 informed him that the appellant had repeatedly sexually assaulted the complainants and would give them money. He interviewed the complainants and informed their parents. He then called the sub chief who came to the school. It was revealed to him that the last time the appellant sexually assaulted them was on 23<sup>rd</sup> June 2023 when they had been sent home on account of school fee arrears.
15. PW7 RM, the complainants' mother confirmed that PW2 was born on 3<sup>rd</sup> April 2012 while PW1 was born on 5<sup>th</sup> April 2009 and were students at [Particulars Withheld] On 29<sup>th</sup> June 2022, she received a call from the school headmaster informing her about what her children had disclosed to him. She was informed that the appellant would give them Kshs. 50.00 each time he sexually assaulted them. She later took them to Hospital where they received treatment.
16. PW8 Samuel Waithaka a farmer and assistant chief testified that on 28<sup>th</sup> June 2022, the head teacher of [Particluards Withheld] called him and informed him that the complainants had been repeatedly defiled by the appellant whom he knew. PW8 interrogated the minors from the school premises and advised them to report. Later on, PW8 arrested appellant when he was purchasing beans at a local shop and escorted to the place station.
17. PW9 CPI Andrew Ikiugu of Wang'uru Police Station was the investigating officer assigned this case. Investigations were conducted, testimonies were recorded and evidence preserved. He produced the



- minor's birth certificates as evidence. He formed the opinion that the appellant had been properly charged.
18. At the close of the prosecution's case, the trial court found that the prosecution has established a prima facie case against the appellant. He was placed on his defence. His evidence was that he had been framed as the complainants' mother wanted to grab his 4 parcels of land. He deduced this from the fact that the complainants' mother was living with a man who took away his land. He pleaded for remorse as he was an orphan.
  19. In a charge of defilement, the prosecution must establish the following crucial elements: the age of the complainant, penetration and the identity of the offender. On the age of the complainant, PW1 EW testified that she was a class six student at [Particulars Withheld] Her mother PW7 confirmed that she was born on 5<sup>th</sup> April 2009. Her birth certificate positively confirmed this. In the same vein, PW2 testified that she was 10 years old born in 2012. Her mother confirmed that from her birth certificate, PW2 was born on 3<sup>rd</sup> April 2012. That evidence conclusively demonstrates that the complainants were children within the meaning ascribed to the term.
  20. Did the appellant cause penetration to the two minors? PW1 and PW2 shared the same narrative by and large. Their evidence was that the appellant accosted them to his home. They were together. He asked them to lie on the bed. He removed their clothes. He then has sexual intercourse in turns starting with PW1 and proceeded to PW2. He then lured them with money asking them not to disclose this heinous act; that happened the following day. The whistle was blown by one of the students who informed the teachers about what had transpired. Clinician PW3 confirmed on 29<sup>th</sup> June 2022 that the hymens of the complainants were absent and torn.
  21. The complainants both witnessed each other being sexually assaulted by the same perpetrator. The appellant, who was the assailant, was well known to them. The offences happened repeatedly and during the day time. There is no mistaken identity. I further find that the complainants gave evidence that was unshaken. PW2 cried during cross examination; an indication that she had been traumatized. In my view, the complainants had no reason to frame the appellant as he purported to suggest. He claimed that it was PW7 who coached the complainants to frame him. Interestingly, he did not put it to this particular witness. His evidence, which was considered by the trial court, did not shake the prosecution's evidence. I am convinced and persuaded that the charges preferred against the appellant indeed established that he was the perpetrator of the offence.
  22. It cannot be gainsaid that from a cursory perusal of the proceedings, there were certain discrepancies noted. For instance, PW2 testified that she was given Kshs. 50.00 and Kshs. 5.00 while her sister was given Kshs. 20.00. However, PW7 stated that they were given Kshs. 50.00. On another occasion, PW1 stated that they were coming from school at 7:00 a.m. while PW2 testified that they were coming from school at 4:00 p.m. Another discrepancy is found in PW6's testimony who stated that the complainants were defiled on 23<sup>rd</sup> June 2023 when they had been sent home on account of school fee arrears. Finally, PW4 and PW5 differed as to whether PW6 was the school's headmaster or deputy headmaster. I find all of these contradictions minor and do not affect the credibility of the evidence adduced and the charges preferred against the appellant. What is apparent is that the appellant committed the offences that he was charged with repetitively. Those contradictions did not go into substantial justice.
  23. On whether the charge sheet was defective as it failed to set out that the alleged acts were unlawful, it is clear that the appellant understood that he had been arrested and charged with a criminal offence. It was explained in a language he understood to which he took plea denying the charges. It was therefore neither here nor there whether the particulars of the offence indicated that the act was unlawful. After all, a charge sheet contained an offence and particulars that are manifestly unlawful on the face of it.



24. As to whether N and Mr. J ought to have been called as witnesses, I find that the witnesses availed by the prosecution sufficiently established that the complainants were minors and had been penetrated by the appellant.
25. The appellant lamented that his right under Articles 50 (2) (g) and (h) of *the Constitution* were violated as he was not promptly informed of his right to legal representation. In the decision of the Court of Appeal in *Manyeso vs. Republic* [2023] KECA 827 (KLR), the Court held as follows:
- “This court (Kairu, Mbogholi-Msagha and Nyamweya JJA) held in *William Oongo Arunda* (Hitherto referred to as Patrick Oduor Ochieng) *v Republic (Criminal Appeal 49 of 2020)* [2022] KECA 23 (KLR) that the operative circumstance that triggers the necessity of legal representation in criminal proceedings is where substantial injustice would occur arising from the complexity and seriousness of the charge against the accused person, or the incapacity and inability of the accused person to participate in the trial. The court also noted that it should be standard practice in every criminal trial for the accused person to be informed, at the onset, of his right to legal representation since *the Constitution* demands it. However, in the present appeal, the appellant did not raise the issue of legal representation either in the trial court and the High Court, and the record of the trial court shows that the appellant participated in the trial and cross-examined the witnesses, and it is not evident that he suffered any or any substantial injustice. For these reasons, we do not find any merit in the appellants arguments that their rights to a fair trial on under articles 50(2)(g) and 50(2) (h) of *the Constitution* were violated.”
26. As apparent from the record, the trial magistrate did not inform the appellant of his right to legal representation. However, it was incumbent upon the appellant to establish that on account of the failure by the court to inform him of his right to legal representation, substantial injustice was occasioned. From the record, the appellant actively participated in the proceedings and even cross examined the witness comprehensively. Accordingly, I do not find any substantial injustice that was occasioned. That argument must fail.
27. The appellant further complained that he was unlawfully detained for more than 24 hours when he was arrested on 29<sup>th</sup> June 2022; a breach of Article 49 (1) (f) of *the Constitution*. The record at trial however does not indicate that the appellant raised this concern at trial. I therefore dismiss the same as an afterthought.
28. Lastly, on sentencing, the appellant was condemned to life imprisonment. Section 8 (2) of the *Sexual Offences Act* provides that a person convicted shall be sentenced to life. Under section 8 (3), such a person may be sentenced to at least 20 years imprisonment. The minors were 10 years and 12 years respectively at the time of the offence. I therefore find that the appellant ought to have be sentenced to life for defiling PW2 and 20 years imprisonment for defiling PW1. These sentences ought to run concurrently. However, since the prosecution failed to appeal against the sentence, I will dismiss the appeal against the sentence.

It is so ordered.

**JUDGEMENT DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF MAY, 2025.**

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



Judgement delivered in the presence of the Appellant and Mamba for the Respondent. Siele/Mark (Court Assistants).

