



**Mwangi alias Tranco v Republic (Criminal Appeal E043 of 2024)
[2025] KEHC 9361 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E043 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

ANTHONY MWANGI ALIAS TRANCO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
13th June 2024 by Hon. S.Temu (SPM) at Kibera Chief Magistrate's Court
Sexual Offences Case no. 23 of 2024 Republic vs Anthony Mwangi Alias Tranco)*

JUDGMENT

1. The appellant was charged and, after a full trial, convicted for the offence of defilement, contrary to Section 8(1) as read with Section 8 (2) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the day of 31st January 2024, in Nairobi County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of CMM a child aged 2 years. He was sentenced to serve thirty (30) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. He complained that the elements of the offence charged were not proved beyond reasonable doubt. He further alleges that he wasn't properly identified as the perpetrator of the offence. He urged the court to quash the conviction and set aside the sentence imposed.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyze and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. The prosecution's case proceeded as follows: PW2, SK, the mother of the minor, CA, born on 6 December 2021 testified that on the material day, while working at her kiosk, the child was absent for



- approximately 10 minutes. Hearing screams, PW2 found the child crying at Mwangi's kiosk, where the appellant, identified as Franco, was present with his trousers zipped open. When questioned, he claimed he was "making her cry a bit." The child, clutching her private parts, mentioned "Franco." Upon inspection, PW2 observed a whitish substance and blood on the child's pants. A woman called to examine the child and advised her to take her to the hospital for examination and treatment for suspected defilement.
5. PW2 took the child to a private hospital and was referred to a police station. On cross-examination, PW2 confirmed her kiosk was ahead of the appellant's, and she alone found him with the child. The woman she consulted was approximately 500 metres away.
 6. PW3 testified that Mama Helen (PW2) requested her to examine the child's private parts, where she observed traces of blood and an unidentified whitish substance. She advised hospital treatment. On cross-examination, PW3 reiterated seeing blood and a whitish substance.
 7. PW1, a clinician at Nairobi Hospital, testified that the complainant was examined and treated by a colleague on unpaid leave, and was brought to the hospital following an alleged defilement on 31st January 2024. The child had prior treatment at Chemi Chemi ya Uzima Dispensary. Medical examination revealed no physical injuries, but the hymen was broken at the 3 o'clock position, with redness and a urinary tract infection noted. Laboratory tests showed no infections. Medication was prescribed, and a P2 form was completed on 2nd February 2024. On cross-examination, PW1 confirmed the child's clothes were clean, she exhibited no clinical ailments and appeared calm. The broken hymen indicated penetration, though no samples were taken to identify the perpetrator. PW1 noted that the extent of injuries may depend on the size of the instrument used.
 8. PW4, PC Esther Kagera, corroborated PW2 and PW3's accounts. While on duty, she received a report from a woman with a child alleging defilement. She recorded the statement, issued a P3 form, and produced the child's birth notification, confirming the child was two years old. She visited the scene and arrested the appellant.
 9. The court, finding a prima facie case established, called the appellant to his defence. In an unsworn statement, he denied the charges, claiming he was at lunch during the incident. He argued the complainant's testimony was contradictory, asserting she met the child at the door yet found him holding her. He further stated two stalls separated his kiosk from the complainant's and alleged the prosecution withheld a document he was given, which lacked a stamp, and produced a false, unstamped document. He also claimed the investigating officer misrepresented the absence of stalls between the kiosks.
 10. To succeed in a prosecution for defilement, it must be proven that the appellant committed an act that caused penetration with a child. "Penetration" under section 2 of the Act means, "the partial or complete insertion of the genital organs of a person into the genital organs of another person."
 11. Further, section 8(1) and (2) of the *Sexual Offences Act*, No. 3 of 2006 provides thus:
 8. Defilement
 - (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.



12. The prosecution sought to establish the element of penetration through cogent medical and testimonial evidence. PW1, a clinician at Nairobi Hospital, conducted a medical examination and found the minor's hymen was broken at the 3 o'clock position, accompanied by redness and a urinary tract infection. These clinical findings unequivocally indicate penetration.
13. Further corroborating this, PW2, the child's mother, testified that upon finding the minor at the appellant's kiosk, she observed a whitish substance and blood on the child's pants, suggestive of recent sexual interference. PW3, called by PW2 to examine the child, confirmed the presence of blood and an unidentified whitish substance on the minor's private parts, reinforcing the evidence of penetration. The consistent accounts of PW2 and PW3, coupled with PW1's medical findings, substantiate this element beyond reasonable doubt.
14. The age of the minor is a crucial element in proving defilement. The prosecution tendered irrefutable evidence. The trial court relied on the child's birth notification, which confirmed the minor was born on 6th December 2021. At the time of the offence on 31st January 2024, the child was two years old. This documentary evidence, unchallenged by the defence, satisfies the legal requirement to establish the victim's age, a key factor in determining the severity of the offence.
15. The prosecution's evidence, comprising medical findings, eyewitness testimony, and documentary proof, collectively discharged the burden of proving the offence of defilement beyond reasonable doubt. Accordingly, the conviction is upheld.
16. The appellant was sentenced to serve thirty (30) years imprisonment. During the sentencing proceedings, the court considered the mitigation, the pre-sentence report, and his status as a first offender. The court exercised discretion and sentenced the appellant accordingly. I see no reason to interfere.
17. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

