



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rapala v Republic (Criminal Appeal E057 of 2024)  
[2025] KEHC 8975 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8975 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL APPEAL E057 OF 2024**

**JN ONYIEGO, J  
JUNE 25, 2025**

**BETWEEN**

**DAVID SAKWA RAPALA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence in the CM's court at Garissa in Criminal Case No. E003 of 2024 delivered on 05-12-2024 by Hon. Omwange (PM))*

**JUDGMENT**

1. The appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the charge were that on diverse dates between 25.12.2023 and 31.12.2023 at [Particulars withheld], Garissa Township, Garissa Sub county within Garissa County, he caused his genital organ namely penis to penetrate the genital organ namely vagina of F.M.K., a girl child aged 16 years old.
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 of the charge were that on diverse dates between 25.12.2023 and 31.12.2023 at [Particulars withheld], Garissa Township, Garissa Sub county within Garissa County, he willfully and intentionally touched the vagina of F.M.K., a girl child aged 16 years old with his genital organ namely penis.
3. He pleaded not guilty to the charge and a full hearing was conducted. The prosecution called four (4) witnesses in support of its case while the appellant did not call any witness in support of his defence.
4. The trial court delivered its judgment thus convicting the appellant and consequently sentenced him to 15 years in prison.



5. Being aggrieved by the determination of the trial court, the appellant filed an undated petition of appeal citing the following grounds:
  - i. That the learned magistrate erred in law and fact by convicting him notwithstanding the fact that the prosecution did not prove its case.
  - ii. That the learned magistrate erred in law and fact by convicting the appellant notwithstanding the fact that the prosecution's case was marred with inconsistencies.
  - iii. That the learned magistrate erred in law and fact by failing to consider his defence and mitigation.
6. The court directed that the appeal be canvassed by way of written submissions.
7. In his undated submissions, the appellant contended that the court erred in convicting him based on evidence which did not support the charge. That prosecution did not discharge its burden of proof in accordance with Section 109 of the *evidence Act*. He urged the court to consider societal norms that once a girl finishes standard eight, quite often, she is ready to get married or is forced by the community to get married.
8. He contended that there was no proof as to who penetrated the victim and when. On the aspect of corroboration, it was his contention that there was no corroborating evidence to show that the victim was arrested from his house. He also submitted that at one time, the court forced him to proceed with the hearing even when he had indicated that he was sick. Lastly, it was his contention that the prosecution's evidence was contradictory.
9. The respondent filed submissions dated 18.03.2025 urging that it was opposed to the appeal for the reason that the case was proved to the required standard. Mr. Owuor, counsel for the respondent contended that the prosecution had established the salient elements of the offence of defilement inter alia; age, penetration and identification. To support this proposition, learned counsel relied on the case of *Mwalango Chichoro Mwanyembe vs Republic* [2016] e KLR. That the complainant's birth certificate as well as the medical documents established that the complainant was a minor aged 16 years.
10. On penetration, the prosecution counsel contended that apart from the evidence of the complainant, the medical report by PW4 corroborated the fact that indeed, the complainant was penetrated. Regarding identification, counsel opined that the same was not in doubt as the appellant stayed with the complainant in the same house defiling her for a period of five days hence no mistaken identity.
11. On sentence, counsel relied on the case of *R vs Ruth Wanjiku Kamande*, criminal Appeal No. 102 of 2018 where the court held that there are circumstances where a court is at liberty to mete out a mandatory sentence. To that end, this court was urged to uphold the finding of the trial magistrate.
12. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh and come to my own conclusion without losing sight of the fact that the trial court had the advantage of seeing and listening to the witnesses testify. See the Court of Appeal holding in *David Njuguna Wairimu vs Republic* [2010] eKLR.
13. Briefly, PW1, F.M.K testified that on 25.12.2023, she left her aunt's place at Ngamia road to attend a church service at Word Faith at Madogo. That she stayed in the church till 3.00 p.m. with her friend Sela. That thereafter, they left for Sela's aunt's place near Garissa University. It was her evidence that she stayed there till 5.00 p.m. when she escorted Sela to her house at Madogo. She stated that they left Garissa town and noting that she was to go to Bulla Medina they chose to visit Mumbi who lives



at Ngamia road. Given that they did not find Mumbi, she parted ways with Sela. That it was at that juncture that she met the appellant who was on a motor cycle.

14. That the appellant requested to offer her a lift up to Bulla Medina which request she accepted. It was her testimony that instead of going to Medina, the appellant took her to show ground where they met his (the appellant's) brother. That they left for choma zone where they took soda and only left the venue at 10.00 p.m., for Bulla Adan where the appellant's house is situated. While there, they had sex on the very night and in the morning, the appellant bathed and left only to return at 8.00 p.m. It was her evidence that they had sex on 26.12.2023, 28.12.2023, 29.12.2023 and 31.12.2023 when she tried to call her mother who told her to return home on the following day.
15. It was her further evidence that on 01.01.2024, they woke up for church at Madogo and thereafter they left for Kunaso. That later on, together with some friends they visited the appellant's place where they found him with a group of people. At night, while with the appellant in the house, they heard a knock which turned out to be that of her mother, aunt and a police officer. It was her testimony that it wasn't the first time she was engaging in sex. That upon the appellant getting arrested, he was taken to the police station while she was taken to Garissa General Hospital.
16. PW2, MKK, the complainant's mother testified that on 25.12.2023, she left PW1 at home as she took the complainant's grandmother to the hospital. She stated that the grandmother was admitted at the hospital thereby forcing her to stay with her from the day in question to 28.12.2023. That on reaching home, she did not find PW1 and upon enquiring from her sister whether the complainant was at her place, she informed her otherwise. On 01.01.2024 at 4.00 p.m., two of PW1's friends visited her and informed her that PW1 was at Bulla Aden and therefore, she informed her sister to report the same to the police station. That upon visiting the said house, the appellant and PW1 were arrested. On cross examination, she said that on 01.12.2024 at 4.00 p.m., she received several calls from persons whom she could not identify. In the same breadth, she received messages from the appellant and PW1.
17. PW3, No. 96117 P.C. Shukri Siyat, the investigating officer testified that after the complainant was found with the appellant, she escorted her to the hospital for medical examination and treatment. She stated that the examination proved that the complainant was penetrated as she had bruises on her vaginal walls. She also testified that she recorded statements from witnesses to the effect that the appellant had bought PW1 goodies with a promise to marry her. According to her, the investigations revealed that the appellant indeed defiled the complainant.
18. PW4, Halima Omar, a clinical officer testified that she examined the complainant upon presentation at the hospital. That on physical examination, the body was normal, hymen wasn't intact as there was an old scar. That there were bruises at the junction between the labia majora and the labia minora; whitish per vaginal discharge which had a foul smell and additionally, epithelial cells were also noted on high vaginal swab.
19. DW1, David Sakwa Rapala testified that from 25.12.2023 till 31-12-2023, he reported at his place of work and thereafter he was arrested at his house alone. According to him, the three women whom he was with in the police vehicle were released as he was booked in the cells. He denied committing the offence.
20. I have considered the grounds of appeal, the trial court's proceedings and the written submissions. The only issues that fall due for determination are:
  - i. Whether the prosecution proved its case beyond reasonable doubt.
  - ii. Whether the appellant's defence placed doubt on the prosecution's case.



- iii. Whether the sentence preferred against the appellant was just and fair.
21. It is trite law that for the offence of defilement to be established, the age of the victim, penetration and positive identification or recognition of the offender have to be proved.
22. On the age of the complainant, the *Sexual Offences Act* defines “Child” within the meaning of the Children’s *Act No. 8 of 2001* as “...any human being under the age of eighteen years.”
23. The importance of proving age of a complainant was dealt with in the case of *Martin Okello Alogo vs Republic* [2018] eKLR where the court stated that:
- “On the issue of whether the age of complainant was proved, the importance of proving the age of a victim of defilement under the *Sexual Offences Act* by cogent evidence cannot be gainsaid. The age of the victim is an essential ingredient of the offence of defilement and forms an important part of the charge because the prescribed sentence is dependent on the age of the victim”.
24. In the instant case, the complainant testified that at the material time she was 16 years old. The same was corroborated with her birth certificate that was produced before the court. The birth certificate showed that the complainant was born on 07.08.2007 while she was allegedly defiled between 25.12.2023 and 31.12.2023. It therefore follows that the complainant was aged 16 years and roughly 4 months at the time when she was allegedly defiled.
25. On penetration, Section 2 of the *Sexual Offences Act* defines penetration as the partial or complete insertion of genital organs into the genital organs of another person. The Court of Appeal, in the case of *Sahali Omar vs Republic* [2017] eKLR, noted that:
- “...penetration whether by use of fingers, penis or any other gadget is still penetration as provided for under the *Sexual Offences Act*.”
26. In the instant case, the complainant narrated to the court how she had sex with the appellant on the nights of 25.12.2023, 26.12.2023, 28.12.2023, 29.12.2023 and 31.12.2023. PW4 the clinical officer also testified that on physical examination, it was her finding that the hymen wasn’t intact as there was an old scar. There were bruises at the junction between the labia majora and the labia minora; whitish per vaginal discharge which had a foul smell and additionally, epithelial cells were also noted on high vaginal swab. From the foregoing medical report, one can reasonably conclude that, the complainant was penetrated and as such, I find that the element of penetration was proven by the prosecution.
27. On identification, it is established law that a conviction can be based on the testimony of a single-eye witness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passed the test of reliability in basing conviction on his testimony alone. [See Lord Widgery, CJ comments in the case of *Republic vs Turnbull* [1976] 3 ALL ER 549 at page 552].
28. From the above case law, it is clear that it is proper to base conviction on the evidence of a single witness alone if that evidence is clear and satisfactory in every respect and the convicting court warns itself of the dangers of convicting based on the evidence of a single witness. The law is also clear that there is no particular number of witnesses required for proof of any fact.
29. In the instant case, it was outright from the evidence that the parties herein spent almost six days and nights in company of each other enjoying their desired and unprotected intimacy. From the evidence, it appeared that the appellant desired to have the complainant as a wife. The foregoing was corroborated



- by the evidence of the complainant and PW3. As such, it is clear that identification could not be faulted as the complainant and the appellant spent a long time as alleged together enjoying themselves.
30. Besides, the trial court was satisfied that the complainant was truthful and reliable in her testimony and therefore invoked the application of Section 124 of the *Evidence Act*. It is clear that the only direct evidence relied on by the prosecution was that of the complainant.
31. However, the proviso under Section 124 of the *Evidence Act*, does empower a trial court to convict an accused person on a sexual related offence without mandatorily requiring corroboration as long as the court is satisfied that the victim is truthful. See the case of Mohamed v Republic (2006)2KLR 138 where the court held that;
- “It is now settled that the courts shall no longer be hamstrung by requirements of corroboration when the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful”
32. In the circumstances of this case, I have no doubt that the trial court properly addressed its mind to Section 124 of the *Evidence Act* thus convicting based on the evidence of the single witness. Accordingly, am satisfied that identification was positive and therefore no mistaken identity considering that the victim and the appellant spent about six days together enjoying their youth intimately without resistance. It cannot be possible to say that pw1 was lying in the circumstances.
33. The appellant urged that his defence was not considered by the trial court. From the record, it is clear that the court did consider his defence and found the same not convincing and weak. Therefore, the allegation that his defence was not considered is not true.
34. On the allegation of contradictions, the law is clear that contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. It is also trite that the prosecution had a duty to prove the elements forming the offence herein which in my view were proved beyond any reasonable doubt. Any other alleged inconsistency which was not proved is not material to the case herein. [See the case of Onyango Ondeny vs Republic [2014] eKLR].
35. On sentence, the appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006. It is provided that a person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
36. In affirming the sentence meted out by the trial magistrate, I rely on the finding of the Supreme Court in Petition No. E013 of 2024, Republic vs Julius Kitsao Manyeso, where the Court held that the mandatory sentences under the SOA are constitutional. The sentence imposed herein is the minimum provided in law under the offence in question hence this court has no room to interfere.
37. In the given circumstances therefore, I dismiss the appeal herein for want of merit and accordingly do uphold both the conviction and sentence of the trial court.

RAO 14 days

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF JUNE 2025**

**J. N. ONYIEGO**

**JUDGE**

