



**Karuri v Republic (Criminal Appeal 110 of 2023)
[2025] KEHC 8968 (KLR) (Crim) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 110 OF 2023**

KW KIARIE, J

JUNE 25, 2025

BETWEEN

STEPHEN KAMAU KARURI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in the S.O.A. case NO. E009 of 2023 of the Principal Magistrate's Court at Engineer by Hon. E.N. Wanjala-Principal Magistrate)

JUDGMENT

1. Stephen Kamau Karuri, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of the offence are that on the 25th day of March 2023 at [Particulars withheld], within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the anus of C.G.N., a child aged fourteen years.
3. The appellant was sentenced to serve twenty years' imprisonment. He was aggrieved and filed this appeal against the conviction and sentence. He raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact by failing to find that the ingredients of the offence were not proved.
 - b. The learned trial magistrate wrongly applied section 124 of the *Evidence Act*, yet PW1's evidence was uncorroborated.
 - c. The learned trial magistrate erred in law and fact by failing to find that there was a grudge between the appellant and the complainant's family.



- d. That the learned trial magistrate erred in law and fact by failing to consider the appellant's defence.
 - e. The learned trial magistrate erred in law by awarding a 20-year mandatory minimum sentence that offended articles 25(c), 27(1)(2)(4), 28,29 (f), 50(2)(p) of *the Constitution*.
4. The state conceded to the appeal.
 5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
 6. An offence of defilement is established against an accused person when the prosecution has proved the following elements:
 - a. That there was penetration of the complainant's genitalia;
 - b. That the accused was the perpetrator and
 - c. The victim must be below eighteen years old.

This position was echoed in the case of *Fappyton Mutuku Ngui vs Republic* [2012] eKLR. Ngugi J. (as he was then) said:

Going by this definition of defilement... the issues which the court needs to determine...first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child, and finally, whether the penetration was by the Appellant.

7. I will determine if the prosecution proved these ingredients to the required standards.
8. C.G.N. (PW1), the complainant, stated that he was 11 years old when he testified on the 5th of June 2023. A copy of his Certificate of Birth was produced, indicating that he was born on the 21st of October 2008. Although he contradicted what is stated in the Certificate of Birth, as of the 25th of March 2023, he was 14 years and five months old. I am satisfied that his age has been proven.
9. The medical evidence was presented by Dr. Patrick Kariuki (PW3) on behalf of Dr. Patrick Wakahiu, who examined the complainant on the 4th of April 2023. An examination of his genitalia and anal area revealed no injuries.
10. In his evidence in chief, the complainant stated the following:

I am 11 years old. On 25/3/2023, It was at noon. Karuri did bad manners to me. He took me to a field and did bad manners to me. People left the field and Karuri removed my trouser, he tore my underwear there is house with a bush full of bottles. I was pierced with bottles. Karuri is the accused person. Positively identified by the witness pointing at him in dock. He did bad manners at the anus. After that he took me to a house which was surrounded by bush. In that house, he again did bad manners at the anus. He said I should not tell anyone he will kill me. It started raining heavily. People left the field. When people left the field, he held my leg so that I remain behind. I went home later at 8 pm. He defiled me at 3 pm. I told my mother that Karuri did bad manners to me. I have a grandmother, Elizabeth Kwamboka. I told her that Karuri defiled me. When I was with my grandmother, I was not okay. The doctor said I sit in salty water. I was feeling pain. I went to the hospital at Nyayo Ward. I was given mediation, after that defilement, I was in pain, but I was walking well.



11. During cross-examination, he stated:

It is John who defiled me. I do not know where John got the behaviour of sodomising men. It is John who removed my trouser. It is you who removed my trouser. John should explain why you remove my trouser. I reported to my mother. My mother went to report it to the police station. I told the OCS what Karuri did to me. I know you as Karuri. My mother did not take the clothes I had in the day of incident to the police station. There were children who were in the field. You told them not to look at us. He told me not to scream. You told me that if I run, he will kill me.

12. The complainant's evidence was self-contradictory and contradicted the medical evidence. Whereas he contended that he was sodomized, the medical evidence did not support this contention.

13. In his evidence in chief, the complainant said he was eleven years old, but the birth certificate indicated he was fourteen. This ought to have been a red flag. After identifying Karuri as the person who defiled him, during cross-examination, he said John defiled him. The learned trial magistrate erred by relying on his evidence after he had informed the court that he knew the appellant as Karuri. The identity of the person he alleged defiled him was not clear. The Court of Appeal in the case of *Ndungu Kimanyi vs Republic* [1979] KLR 283 (Madan, Miller and Potter JJA), held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

14. The complainant's evidence was incoherent and contradictory, and therefore, it needed corroboration, which the evidence on record did not provide.

15. The proviso to section 124 of the *Evidence Act* states:

Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

16. The learned trial magistrate chose to believe the complainant's evidence over that of the medical staff without explaining why. This constituted a grievous error. It was prejudicial to the appellant.

17. Stephen Kamau Karuri, the appellant, argued that he was falsely framed in the case due to a grudge between his family and that of the complainant. During cross-examination, he said he was at Njoroge's garage at the material time. The learned trial magistrate erred in shifting the burden of proof to him. She concluded that the failure to call Njoroge made his alibi defence untenable. The Court of Appeal in the case of *Kiarie vs Republic* [1984] KLR, held:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

18. The upshot of the foregoing analysis of the evidence on record is that no evidence supported the conviction. The conviction is quashed, and the sentence is set aside. The appellant is at liberty unless otherwise lawfully held.



DELIVERED AND SIGNED AT NYANDARUA ON THIS 25TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

