



**Kariuki v Republic (Criminal Appeal E014 of 2024)  
[2025] KEHC 8898 (KLR) (Crim) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL E014 OF 2024**

**KW KIARIE, J**

**JUNE 24, 2025**

**BETWEEN**

**JOHN WAINAINA KARIUKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in the S.O.A. case NO. E024 of 2023 of the Principal Magistrate's Court at Engineer by Hon. E.N. Wanjala-Principal Magistrate)*

**JUDGMENT**

1. John Wainaina Kariuki, 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 13<sup>th</sup> day of October 2023 at [Particulars Withheld] village of North Kinangop within Nyandarua County, he intentionally and unlawfully caused his penis to penetrate the vagina of V.N.N., a child aged fifteen 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 erred in law and fact by failing to find that there existed a grudge between the complainant and the appellant.
  - c. The learned trial magistrate erred in law and fact by failing to consider the appellant's alibi defence.



- d. The learned trial magistrate erred in law by awarding a mandatory minimum twenty (20) years' imprisonment sentence that offended articles 25(c), 27(1) (2)(4), 28,29 (f), 50(2)(p) of the Constitution.
4. The state opposed the appeal through m/s Odera Vena, who contended that it lacked merit.
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. To establish an offence of defilement against an accused person, the prosecution must prove 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. V.N.N. (PW2), the complainant, stated she was 15 years old when she testified on 27 December 2023. A copy of her Certificate of Birth indicates that she was born on the 18<sup>th</sup> day of August 2008. As of the 13<sup>th</sup> day of October 2023, she was 15 years and two months old. Her age was therefore proven.
9. The medical evidence adduced by Doctor Patrick Wakahiu (PW4) was that when he examined the complainant on the 24<sup>th</sup> day of October 2023, the genitalia had a white discharge, and the hymen had been breached with old tags. He, therefore, concluded that there was penetration.
10. The complainant informed the trial court that the appellant requested her to assist him in holding one cow as he tethered the other. This is when he grabbed her and, despite her protestations, took her to his house. He placed a knife within her sight and defiled her on his children's bed. After the defilement, he warned her with dire consequences.
11. When she returned to their home, she did not report to anybody but continued crying. M.W.M. (PW1), her mother, confirmed that the complainant kept crying for a week from the 13<sup>th</sup> day of October 2023. When she finally opened up, she implicated the appellant.
12. John Wainaina Kariuki, the appellant, tendered an alibi defence. He also contended, through his wife, that he held a grudge against the complainant's father. When an accused raises an alibi defence, they do not bear any burden to prove its truth. This was stated in the case of Kiarie vs Republic [1984] KLR, where the Court of Appeal 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. It is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.



13. The appellant's alibi defence emerged for the first time in his unsworn testimony. Whereas he stated that he was only absent from the house during the day on the 13th of October 2023, Sarah Njeri Waithera (DW2), his wife, asserted that he was away from the 12th of October 2023 and returned on the 15th of October 2023. Weighed against the evidence on record, this defence amounted to an afterthought. The learned trial magistrate cannot be faulted for dismissing it.
14. Sarah Njeri Waithera (DW2), in her evidence, stated that the complainant's father and her husband had fought in a bar over allegations that the complainant's mother was having an affair with the appellant. Curiously, the complainant's mother was not confronted with this evidence. This was a faint attempt to create a non-existent defence.
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 complainant's evidence was corroborated in many respects. As I do, the learned trial magistrate had ample reason to believe her evidence. The appeal is dismissed for want of merit.

**DELIVERED AND SIGNED AT NYANDARUA ON THIS 24<sup>TH</sup> DAY OF JUNE 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

