

KENYA / JUDGMENT

CGN v Republic [2026] KEHC 4492 (KLR)

[2026] KEHC 4492 (KLR)**COURT**

High Court

BEFORE

EM Muriithi

CASE / FILE NUMBER

Criminal Appeal E001 of 2025

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CGN v Republic (Criminal Appeal E001 of 2025) [2026] KEHC 4492 (KLR) (26 February 2026)
(Judgment) Neutral citation:

[2026] KEHC 4492 (KLR) Republic of Kenya In the High Court at Kerugoya Criminal Appeal E001 of 2025 EM Muriithi, J February 26, 2026 Between CGN Appellant and Republic Respondent (Being an appeal from the original conviction and sentence by Hon. L.W. Kabaria (Ms) PM in Gichugu Cr. No. E012 of 2023 delivered on 6/12/2024)

Judgment

1. The Appellant was charged with 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 28 th day of March 2023 at[Particulars Withheld] village, Kirinyaga East sub-county, within Kirinyaga County, the Appellant caused his penis to penetrate the vaginas of CNG a child aged 7 years. He faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No.3 of 2006. It was alleged that on the same date and place, he intentionally caused his penis to come into contact with the vagina of CNG a child aged 7 years. 2. He faced a second count 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 same day and place, he caused his penis to penetrate the vagina of NMW a child aged 8 years. He faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars were on the same date and place, he intentionally caused his penis to come into contact with the vagina of NMW a child aged 8 years. 3. He faced a third count of attempted defilement contrary to Section 9 (1) as read with Section 9 (2) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the same day and place, he attempted to cause his penis to penetrate the vagina of LFN a child aged 7 years. He faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the same day and place, he intentionally caused his penis to come into contact with the vagina of LFN a child aged 7 years. 4. He faced a 4 th count of attempted defilement contrary

to Section 9 (1) as read with Section 9 (2) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the same day and place, he attempted to cause his penis to penetrate the vagina of V.W.M a child aged 7 years. He faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the same day and place, he intentionally caused his penis to come into contact with the vagina of VWM a child aged 7 years. 5. He denied the charges but upon full trial, he was convicted to life imprisonment on each count of defilement and 10 years imprisonment on each count of attempted defilement. The Appeal 6. On appeal, the Appellant raised 7 grounds of appeal as follows: 1. The learned trial magistrate erred in law by convicting the Appellant to life imprisonment in jail without observing that all the ingredients of the offence of defilement and committing indecent act with a child were not proved beyond reasonable doubt and the Appellant herein has to suffer. 2. The learned trial magistrate erred in a point of law by relying on the evidence on record adduced by the prosecution which was contradictory, uncorroborated and incredible especially to the point where the offence actually occurred considering the physical disability (fingers cut off in both hands) of the Appellant. 3. The learned trial magistrate erred in law and facts in relying on the uncontroverted testimonies of the complainant. 4. The learned trial magistrate failed in law and facts by putting the Appellant herein on defense when he had been declared to have had history of mental illness (since 2004) and was on treatment and a follow up clinic was recommended. He wasn't returned for second assessment report with help of a close family relative who could have offered background history of the Appellant herein. This led to weak and shallow defense leading to a miscarriage of justice. 5. The learned trial magistrate erred in law and facts by failing to conduct a voir dire probe on the minors leading to a gross misapprehension of the law. 6. The trial magistrate erred in law and facts by imposing excessive and extremely harsh sentence against the weight of the evidence. 7. The learned trial magistrate erred in law and facts by relying strongly on identification of the Appellant herein to which the victims were probably coached by pw5 (Ms. Marion Wangui) with help of pw7 (Damari wari). Duty of Appellant Court 7. The duty of this court as the first appellate court is to re-evaluate the evidence on record and draw its own independent conclusions, bearing in mind that it neither saw nor heard the witnesses and should make due allowance in that respect. (See *Okeno v R* (1972) EA 32). Evidence 8. PW1 LFN gave unsworn testimony that, "I am seven years old. I school at [Particulars withheld] Primary School. I am in class 2. My mum is called MW. I live in [Particulars Withheld]. I know that man (nodding at the accused). He is called CG. We go to school with another boy. My friends are the ones who are outside, CN, NM and VW and others. We are in the same class but not in the same school V. is not in the same school as us she goes to [Particulars Withheld] primary school but I am not sure. On 28th March 2023 we were in Kimunye we had come from school we were going home. CG took us into tea bushes belonging to N, he removed our clothes he lay on us he said if we tell he will strangle us. He told us to go home and if we tell he will strangle us. We told, some us told their fathers and others told their mothers. I told my mother my father went and told the assistant chief who told us to go to the police station. We went to Kimunye police station.

We went and said what happened. I told the police that we were taken to the tea bushes he took us to the tea bushes removed our clothes lay on us and said he will strangle us if we tell. He found us along the tarmac there were no other people there is a path in the tea bushes going down that is where we were. It was me, C, and VW. Yes, N. was also there. He started with V. I was just there, V went with him we remained when he finishes he comes back. Me he removed my trouser and school skirt. Then he lay on me he did bad manners to me he said if I report he will strangle me. He lay me on the ground in the tea bushes. His clothes were at the ankles he had removed his trouser to the ankles he lay on me. He did bad manners to me to this part of me that I use to urinate. He used the part he uses to urinate. That part he uses to urinate he lay on me. I cried because I felt pain here (touching the centre of her legs) he lay on me when he put it inside I felt pain he told me not to cry but I cried. I wore my own clothes and came out. He told me to wait for the others as he was doing bad manners to the others. After we went to the police station we were taken to another police station they spoke with parents. We came to Kianyaga hospital we were treated. All four of us were treated. The person who did bad manners to me is that one (pointing at the accused) I knew him before that day he is called G. No, he does not live where we live we usually pass by their home on our way to school. I have never done had differences with him.” 9. On cross examination, she stated that, “Yes, there is a day we were with you in the tea leaves belonging to N. I am not lying.” 10. PW2 CNG gave unsworn testimony that, “I am seven years old. My dad is AG. My mum is DW. My school is [Particulars Withheld] Primary School. My friends are M., M. and F. We are in the same class. My teacher is called Teacher P. I came to court with my dad today. I know the accused he is called G. I love colouring. I remember the 28 th March 2023 we had come from school we were going home. G took us into the tea bushes he removed our clothes and did bad manners. He called us one at a time. He first called V., then he called M. then he called me. He told me he will buy us cake soda, cake and sweets. He removed my clothes my school uniform he removed my stockings and lay on me. He was wearing a trouser he removed his clothes. He lay on me here (pointing to the centre of her legs) that is the part I use to urinate he used his part the one he uses to urinate. I did not cry he told me to be quiet. That if I cry he will strangle us. He told us to wear our clothes. When he lay on me V. and F. were there they saw it. After we wore our clothes he told us to go home. We went home. It is our teacher who told our parents. I don’t know who told the teacher. The teacher is called Mrs. N. We were taken to hospital. The hospital is called karandi. It is in mjini. We were also taken to another hospital called Kianyaga. We were treated. I was also treated. I don’t remember my birthday but I am seven years old. G is that one (pointing at the accused) he and I had not had a problem before. His home is in [Particulars Withheld]. It is not far from our home.” 11. On cross examination, she stated that, “We were four people. Yes, you took hold of our hands together. Yes, you lay on top of each of us.” 12. In re-examination, she stated that, “He lay on us and (gets teary eyed says no more).” 13. PW3 NMW gave unsworn testimony that, “I am in Grade 2 in [Particulars Withheld] Primary School. I am eight years old. This one is C. (pointing at PW2), I was with F. and V. we go to the same school same grade. Our teacher is Mrs. N. I know the accused he is called G his home is in [Particulars Withheld]. It is not near

my home. We used to live those sides a long time ago then we moved to karoki. On the 28 th March 2023 we had come from school with V F and N. It was during the day. We were going home. G called us he had hidden himself in the tea bushes the ones for N. He called us we went there to the tea bushes. He removed our clothes and did bad manners to us. We were all there. He first called V. he did manners to her. He removed her clothes. G had removed his clothes. He was wearing his trouser he removed it. Then after that he called me he did bad manners to me. I had removed my clothes he is the one who removed my clothes. I was wearing my school uniform a dress. I was also wearing stockings. He told me to lie down. He lay on me. He did bad manner to me here (the child is crying - touches the centre of her legs) I use that part to urinate. He used that part of his that is in the middle of his body. He put that part inside mine. I did not cry. He told us if we tell our parents he will kill us. He gave us soda biscuit and chapati. I don't know where he had gotten them from. (testifies as she obscures her face with her hand) He told me to stand up then he called F. I wore my clothes. He removed F's clothes and did bad manners to her. Then he called C. He did bad manners to her. After that he told us to go home. I went home. I did not tell mum. We started by telling the teacher. It is all of us who told the teacher she called our parents. I told the teacher it is G who did bad manners to us. Our parents came. They were told what G had done to us. We went to the police station in Kimunye. We were taken to hospital the hospital is called karanji. Yes, it is the one called Victory medical Centre. After that we were taken to kianyaga hospital we were treated. G 5here in court he is that one (pointing at the accused before the court)." 14. On cross examination, she stated that, "When you lay on us there is something you did to us. You did bad manners to us." 15. PW4 VW gave unsworn testimony that, "I go to [Particulars Withheld] primary school. I am in grade three. I am eight years old. I don't know the month of my birthday but it is on 31 st . My mother has my birth certificate. Yes, I am VW. I know the accused that one sited there he is called G. On that day 28 th March 2023 I was with N.F and M. we were going home. We did not get home. When we reached near the dam we saw G. N. is the one who knew him. She said he lives near their home. She said we run away he is not a good person. F. said no. G gave F. a chapati I told her to throw it away she refused. We were meeting with him every day we were coming from school. Mum told me to tell her what had happened because every time I was in school I kept looking behind. She said I won't go home. There is a time there was a funeral we met with F's mother they said they were looking for G he came looking for me with a knife because I had told my mother the truth. G used to wait for us when we were going home. He was taking us to the tea plantation and doing to us bad manners here (pointing to the middle of her legs). The part he did bad manners to us ...(stands up points once again to the middle of her legs). He was laying us on the ground and doing bad manners to us he was sited. He was not wearing clothes when he did bad manners he was not wearing his inner clothes. He did bad manners to me, N., M. and F. Everyone their own turn. He went to look for me but he was arrested at the stage. He was running after some children. He was arrested at the stage. I told my mum what happened. She said I will not go to school. She told my grandmother. We went and reported at the police station and he was arrested. I was taken to Kianyaga hospital. I was treated. I was not injured. He did bad manners to us he put it inside us. He put it inside me.

N. tried to stop him. We left him there and run away he did not say anything. I did not tell my mum I don't have a reason why I did not tell her. G is that one (pointing at the accused).”

16. PW5 MWN gave sworn testimony that, “I am a retired teacher. I retired on 14 th November 2023. I was a teacher at [Particulars Withheld] Primary School. I know the children who have testified N., V., F. and C. I was their class teacher. They were in grade 2. On the 28 th March 2023 I was in the school. I was teaching the children extra time. Environmental classes. I had been teaching safety which is an important topic for children. It was in the afternoon. I was teaching them about safety while going home and coming to school. I taught them road safety and along big rivers. I reached a time I talked about strangers they meet along the way. We had lost a child in the neighbouring school so it was an issue I was emphasizing. I told them strangers are not good people most of them there are those who kidnap children or hide you in the forest. I cautioned them they can be enticed with things like sweet I showed them demonstrations in the text books. They looked concerned about strangers. V. came to the front I had arranged them in groups to do a task to discuss the topic. V. came to where I was she told me there was a man who was giving us those favours she said he had given F. a chapati and she ate it. She told me he is called G that he was giving them chapati and sweets. I called F. and asked who it was giving them favours she said it is G she told me that after he gives us those things he takes us to the bush removes our trousers and does bad manners to us. I called the other children they repeated the same story. I was very scared because we had lost a child in a neighbouring schools. I told them to come with their parents the next day. I organized for the children to be walking in groups. I told the children to narrate to their parents what they had told me. They repeated the same story. One parent a neighbor told me she had gone to harvest tea and saw G calling N. but she warned him about it. Each child repeated what they had told me. I told the parents it was their responsibility to interrogate the children and confirm if what they had said was true and to know how the children will be getting to school safely. I did not tell them to report the matter. The following day one of the parents came to school and told me they wanted to go with the children to report the matter. I informed the deputy principal what was happening. I was directed to accompany them to the police post. We went together and the matter was reported at the police post. The officer called me and I narrated what the children had told me. I was not there when the children were taken to hospital. When the children told me he was taking them to the tea plantation and doing bad manners to me I understood they mean sex. I know G because I had seen him in Bingwa Sacco because of tea proceeds. He is the one who is before the court. Even when the children saw him there they pointed him out saying that is the G we were telling you about.”

17. On cross examination, she stated that, “When I was told what happened the children told me he put his organ in them. Even V. narrated the experience. It is the court which will determine if you defiled them it was my duty to report to the parents. I did not even know you before. I did not say that you defiled them or you did not the court will decide. Yes. V. narrated the experience she said she felt a lot of pain in her private part when he inserted his organ in her that he uses to urinate. He inserted it in the part she uses to urinate. She is the only one I asked.”

18. PW6 Zebeon Njogu Magu a clinical officer based at the Kianyaga sub county hospital examined PW4 and noted

that there was no vaginal bleeding but there was a brownish vaginal discharge. The vaginal examination revealed that the external genitalia was normal, the hymen was intact and no bruises or inflammation, the HIV test and Syphilis tests were negative and there were no spermatozoa, which were all indicative of attempted defilement. 19. When he examined PW1, she had no discharge, her hymen was intact, there were no bruises or lacerations and he made an impression of attempted defilement. 20. He further examined PW3, whose external genitalia was normal with a normal vaginal wall and her vagina was old torn, which was a sign of vaginal penetration. There were no bruises or lacerations and no vaginal discharge and he made an impression of defilement. 21. He equally examined PW2, and noted tenderness along the vagina area, a vaginal discharge and her hymen was old torn. The victim was unstable and uncooperative during the high vaginal swab test because of pain and he made an impression of defilement. He produced the P3 forms and PRC forms in respect of the 4 complainants as exhibits. 22. PW7 DW, gave sworn testimony that, "I am a farmer. I know the accused he is called G. I know him as someone who tried to defile my child. I knew him before the incident I used to see him walking around. My daughter is CN she was born in 2016. This is her birth certificate. She was born on the 9 th March 2016 birth certificate number 71xxx. I remember the 28 th March 2023 at about 3.30pm I was at the police station. I was called by the teacher to school because of my daughter I went there and I found the teacher and several students N. and others. She told us she was teaching the children about openness and when she was teaching the children about being open one of them went to the teacher and told her there was a man who every time they came from school was accosting them giving them sweets and taking them to a tea plantation and removing their clothes and lying on them trying to defile them. Afterwards he would threaten to kill them if they told their parents. He wanted defile them. When I heard this, we went to the police station at Kimunye and we narrated what had happened. They took the children to hospital. I talked to my daughter and asked her what had happened she told me they used to meet with G and he did that to them. The children knew him. That is when I remembered she would complain of pain when I was washing her but she did not tell me what the reason was. Yes, it was not the first time. She was examined by the doctor. The doctor said he had confirmed there was an attempt made. After hospital we decided to pursue the matter in court. G is the accused person who is before the court. My daughter was with three other children; F., V., M. and her C." 23. PW8 PC Lydia Odongo, was at the office when four children, their parents and the area assistant chief came to make the report of defilement. The incharge Corporal Alasso and two officers went to the home of the Appellant and arrested him, statements of the victims and other witnesses were recorded and the victims were then taken to the hospital for examination and treatment. She produced the birth certificates of PW1 born on 13/11/2015, PW2 born on 9/3/2016, PW3 born on 14/5/2014 and PW4 born on 31/8/2016 respectively as exhibits and identified the Appellant on the dock. 24. In his unsworn defence, DW1 CGN, the Appellant herein testified that, "I live in Kimunye. I am a farmer. I didn't do what I am accused of."

Submissions

25. The Appellant urged that while the ages of the minors were duly proved via birth certificates, the element of penetration was not proved to the required standard as the term “old torn” was ambiguous to conclusively link the state of the hymen to the specific incident of 28/3/2023, and cited *Kaingu Elias Kasomo v Republic Malindi Criminal Appeal No.504 of 2010*. He faulted the trial court for convicting him of attempted defilement instead of the lesser offence of indecent act. He urged that the testimonies of the minors were inconsistent, creating doubt about their veracity, and cited *Ndirangu v Republic* [1985] RLR 534 and *Johnson Muiruri v Republic* [1983] KLR 445. He further faulted the trial court for putting him on his defence despite a history of mental illness, which occasioned him a grave injustice, and cited *Joseph Kaberia Kahinga & another v Attorney General* [2016] eKLR. He cited *Maripett Loonkomok v Republic* [2016] eKLR in faulting the trial court for failing to conduct a voir dire inquiry on the minors. He lamented that the sentence imposed on him was extremely excessive and harsh, and cited *Francis Muruatetu & another v Republic* [2017] eKLR and *Joshua Gichuki Mwangi v Republic* [2021] eKLR. In his view, the trial court fell into error when it relied on his identification solely on the visual recognition by the minors, without considering the possibility of coaching or influence, and cited the celebrated case of *R v Turnbull* [1976] 3 All ER 549.
26. The Respondent urged that voir dire examination was conducted on all the minors and the trial court held that they were sufficiently intelligent to give unsworn testimony. It submitted that the elements of the offences of defilement and attempted defilement were proved beyond reasonable doubt, and cited *DS v Republic* [2022] eKLR, *Edwin Nyambogo Onsongo v Republic* (2016) eKLR, *Williamson Sowa Mbwanga v Republic* (2016) eKLR, *Benson Musumbi v Republic* [2019] [2019] KEHC 8723 (KLR), *MTG v Republic* (Criminal Appeal E067 of 2021) [2022] KEHC 189 (KLR) (15 March 2022) (Judgment) and *Republic v Silas Magongo Onzere alias Fredrick Namema* [2017] eKLR.

Analysis and Determination

27. From the grounds of appeal as framed, the sole issue for determination is whether the offences were proved beyond reasonable doubt.
28. Before delving into the merits of the appeal, it is imperative to first address the preliminary issue whether voir dire examination was conducted on the complainants to ascertain their intellectual capacity and their appreciation of the duty to tell the truth.
29. A perusal of the record reveals that the trial court duly conducted voir dire examinations on PW1, PW2, PW3 and PW4 on 20/9/2023, 15/11/2023, and 7/2/2024, and was satisfied that they possessed sufficient intelligence to understand the proceedings and the duty to speak the truth, thereby properly admitting their evidence.
30. The record further discloses that upon the Probation Officer’s Report indicating that the Appellant allegedly suffered from a mental illness, the trial court properly directed that he undergo a mental assessment, and the report ensuing therefrom confirmed that he was fit to plead and stand trial.
- Proof of the offence
31. The ingredients of this offence which the prosecution was required to prove beyond reasonable doubt are age, penetration and identity of the perpetrator.
32. PW8 produced PW1, PW2, PW3 and PW4’s

birth certificates which were conclusive evidence that they were born on 13/12/2015, 9/3/2016, 14/5/2014 and 31/8/2016 respectively. They were thus aged between 7 to 9 years at the time of the commission of the offence. 33. On penetration, PW6 stated that when PW2 and PW3 were examined, nothing was amiss save for the old torn hymen. He stated that PW2 had a discharge, an old torn hymen and she was unstable and uncooperative during high vaginal swab. On examining PW1 and PW4 their hymens were intact. 34. The complainants narrated in detail how the Appellant waylaid them into the tea bushes as they were returning home from school, where he defiled them in turns. PW1 emphatically stated that, "He removed our clothes he lay on us he said if we tell he will strangle us. It was me, C, and VW. Yes, N. was also there. He started with V. V went with him we remained when he finishes he comes back. Me he removed my trouser and school skirt. Then he lay on me he did bad manners to me he said if I report he will strangle me. He lay me on the ground in the tea bushes. His clothes were at the ankles he had removed his trouser to the ankles he lay on me. He did bad manners to me to this part of me that I use to urinate. He used the part he uses to urinate. That part he uses to urinate he lay on me. I cried because I felt pain here (touching the centre of her legs) he lay on me when he put it inside I felt pain he told me not to cry but I cried. I wore my own clothes and came out. He told me to wait for the others as he was doing bad manners to the others." 35. Her testimony was corroborated by PW2 who testified that, "G took us into the tea bushes he removed our clothes and did bad manners. He called us one at a time. He first called V., then he called M. then he called me. He removed my clothes my school uniform he removed my stockings and lay on me. He was wearing a trouser he removed his clothes. He lay on me here (pointing to the centre of her legs) that is the part I use to urinate he used his part the one he uses to urinate. He told us to wear our clothes. When he lay on me V. and F. were there they saw it. After we wore our clothes he told us to go home." She restated even on thorough cross examination that, "We were four people. Yes, you took hold of our hands together. Yes, you lay on top of each of us." 36. PW3 testified that, "He removed our clothes and did bad manners to us. He first called V. he did manners to her. He removed her clothes. G had removed his clothes. He was wearing his trouser he removed it. Then after that he called me he did bad manners to me. I had removed my clothes he is the one who removed my clothes. I was wearing my school uniform a dress. I was also wearing stockings. He told me to lie down. He lay on me. He did bad manner to me here (the child is crying - touches the centre of her legs) I use that part to urinate. He used that part of his that is in the middle of his body. He put that part inside mine. He told me to stand up then he called F. I wore my clothes. He removed F's clothes and did bad manners to her. Then he called C. He did bad manners to her." 37. PW4 testified that, "G used to wait for us when we were going home. He was taking us to the tea plantation and doing to us bad manners here (pointing to the middle of her legs). The part he did bad manners to us ... (stands up points once again to the middle of her legs). He was laying us on the ground and doing bad manners to us he was sited. He was not wearing clothes when he did bad manners he was not wearing his inner clothes. He did bad manners to me, N., M. and F. Everyone their own turn. He did bad manners to us he put it inside us." 38. Upon being notified of the incident by the complainants, PW5 informed PW7, who thereafter

confronted her daughter, PW2. PW7 stated that, "I talked to my daughter and asked her what had happened she told me they used to meet with G and he did that to them. The children knew him. That is when I remembered she would complain of pain when I was washing her but she did not tell me what the reason was. Yes, it was not the first time." 39. The court is minded that the absence of spermatozoa and observable injuries on the complainants' genitalia does not negate the commission of the offence, as the definition of penetration under section 2 of the Sexual Offences Act encompasses both partial and full insertion of the genital organs of one person into the genital organs of another. 40. Invariably, a conviction can be founded even where there is insufficiency of medical evidence provided that the testimony of the complainant are believed to be the truth in terms of section 124 of the Evidence Act . Here, the testimonies of the 4 complainants were uncontroverted and consistent, to found a conviction. 41. On whether the offences were perpetuated by the Appellant, PW1 stated that, "The person who did bad manners to me is that one (pointing at the accused) I knew him before that day he is called G. No, he does not live where we live we usually pass by their home on our way to school." On cross examination, she stated that, "Yes, there is a day we were with you in the tea leaves belonging to N." 42. PW2 stated that, "G is that one (pointing at the accused) he and I had not had a problem before." 43. PW3 stated that, "G here in court he is that one (pointing at the accused before the court)." 44. PW4 stated that, "I know the accused that one seated there he is called G. 45. PW7 stated that, "G is the accused person who is before the court. My daughter was with three other children; F., V., M. and her C." 46. This court finds that the Appellant was placed at the scene of the crime by the complainants, and the offences having been committed in broad day light, the conditions for positive identification were favourable, thereby eliminating any possibility of error. 47. Upon a careful re-evaluation of the evidence on record, the Court is satisfied that the prosecution discharged its burden of proof to the requisite standard of beyond reasonable doubt. 48. On sentence, section 8 (2) of the Sexual Offences Act provides a penalty that, "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." 49. Section 9 (2) of the Sexual Offences Act provides that, "A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years." 50. PW2 and PW3 were 7 and 9 years old and the Appellant was sentenced to life imprisonment, which is the punishment prescribed by section 8 (2) of the Sexual Offences Act . PW1 and PW4 were 8 and 7 years respectively and the Appellant was sentenced to life imprisonment, which is the punishment prescribed by section 9 (2) of the Sexual Offences Act . Those sentences were thus lawful. 51. This court is counseled by Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment), where the Supreme Court enunciated that, "...We therefore find no difficulty in finding that the Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence, thereby usurping the legislative power to define sentences...The Court of Appeal did not have jurisdiction to interfere with the sentence imposed by the trial court and affirmed by the first appellate court. Consequently, the life imprisonment sentence remained lawful and in line with section 8 of the Sexual Offences Act ."

Orders

52. Accordingly, for the reasons set out above, it is this court's finding that the appeal is without merit and it is dismissed. Order accordingly. DATED AND DELIVERED THIS 26 TH FEBRUARY, 2026. EDWARD M. MURIITHI JUDGE Appearances: Appellant Present. Mr. Mamba/Mr. Mwangi for the Respondent.
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