

KENYA / JUDGMENT

Guyo v Republic [2026] KEHC 13457 (KLR)

[2026] KEHC 13457 (KLR)**COURT**

High Court

BEFORE

FR Olel

CASE / FILE NUMBER

Criminal Appeal E031 of 2025

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Guyo v Republic (Criminal Appeal E031 of 2025) [2026] KEHC 13457 (KLR) (31 August 2026)
(Judgment) Neutral citation:

[2026] KEHC 13457 (KLR) Republic of Kenya In the High Court at Marsabit Criminal Appeal E031 of 2025 FR Olel, J August 31, 2026 Between Hassan Buda Guyo Appellant and Republic Respondent (Being an appeal arising from the conviction and sentence delivered on 07.08.2025, delivered by Hon W.K. CHERUIYOT (PM) in Moyale MCSO No E002 of 2025)

Judgment

A. INTRODUCTION 1. The Appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on 15 th day of November 2022 at around 0900 hrs in Ramata Location, Sololo Sub-County within Marsabit County intentionally and unlawfully caused his penis to penetrate the vagina of S.A.W, a child aged 15 years. 2. In the alternative, he was charged with the offence of committing an indecent Act with a child contrary to section 11(1) of the Sexual Offences Act , No 3 of 2006. The particulars of the offence were that on 15 th day of November 2022 at around 0900 hrs in Ramata Location, Sololo Sub-County within Marsabit County intentionally and unlawfully caused his penis to penetrate the vagina of S.A.W, a child aged 15 years. 3. The Appellant took plea and pleaded not guilty to the charges. B. PROSECUTION CASE 4. PW1 S.A.W testified that on 15 th November 2023 at about 9.00 a.m., she was taking a D-light solar lamp for charging at Ramata Guest House, where the appellant worked as a watchman and was also where her family had been charging the lamp for some time. On arrival, she met the Appellant, who held her hand and pulled her into his room at the Guest House. Inside the room, the appellant removed her underwear and his own and had sexual intercourse with her on the bed without protection. After the act, she went home but did not report the incident to her parents because she was embarrassed, the appellant being her father's age-mate and a family friend who regularly visited their home. Later, she missed her periods and informed the appellant. He bought her drugs and instructed her to take them to terminate the pregnancy. The drugs did not work, and he then suggested that they travel to Moyale for an abortion, but she

refused. She eventually gave birth to a baby girl on 22 nd August 2024 at Sololo Mission Hospital. She produced her birth certificate showing she was born on 5 th January 2009 (PMFI 1), a P3 form (PMFI 2), and a PRC form (PMFI 3). She identified the appellant in court as the person who defiled her. 5. Under cross-examination, PW1 revealed that the Appellant had once professed love to her, which she rejected. She explained that during the incident, he held her neck, covered her mouth, and dragged her into his room, which explained why she did not scream. She admitted that she did not report the matter immediately due to shame and fear, and only disclosed it after giving birth. She further stated that after missing her periods for two months, the appellant purchased drugs worth Kshs 3,300, but they failed to terminate the pregnancy. 6. PW2, H.R., stated that PW1 was her daughter and that on 22 nd August 2024, PW1 woke up at about 7.00 a.m. complaining of stomach ache. Schools were closed at the time. PW3 asked her to buy drugs, and she purchased Flagyl from a chemist, but there was no improvement. She then took PW1 to Sololo Mission Hospital, where she unexpectedly gave birth to a baby girl. Upon inquiry, PW1 disclosed that the Appellant was responsible for the pregnancy. PW2 testified that she knew the Appellant well, as he worked at the guest house and had been known to the family for a long time. She informed PW3, who reported the matter to PW4, and the accused was later arrested. She further stated that she reported the matter to PW1's school teacher, noting that PW1 was in Form One at the time. In cross-examination, she confirmed that PW1 had not reported the incident before giving birth, and added that her brother had threatened her to disclose the person responsible. 7. PW3, A.W, stated that PW1 was his biological daughter. On 22 nd August 2024, she had woke up in the morning complaining of stomach ache. He bought her drugs from a chemist, but when her condition did not improve, he asked PW2, to take her to the hospital. Shortly thereafter, PW2 called and informed him that PW1 had given birth, which shocked him. PW3 testified that upon inquiry, his wife told him the child had named the appellant as responsible for the pregnancy. He reported the matter to the chief, who referred him to the police, and the accused was subsequently arrested. He identified the appellant in court, stating that he knew him well as a family friend who frequently visited their home, took tea with them, and was treated like one of the family. He added that his children even referred to the appellant as "father." PW3 further testified that PW1 explained she had failed to report the incident earlier because the appellant was her father's age-mate, which embarrassed her. He confirmed that PW1 was aged 15 years and produced her birth certificate (PMFI 4). 8. PW4, Hussein Wario, stated that he was the chief of [Particulars Withheld] location and that on 23 rd August 2024, PW3 reported to him that his daughter, a student at [Particulars Withheld], had been defiled. He advised him to report the matter to the police. The following day, PW3, in the company of the appellant and PW4, went to the police station, where the appellant was arrested. 9. PW5, Ahmed Golo Sora, stated that he was a clinical officer at Ramata Health Centre and had worked there for several years. On 25 th August 2024, PW1, a 15-year-old girl, was brought to the facility by a police officer after having delivered a baby girl at Sololo Mission Hospital two days earlier. He examined her and found all systems normal, with slight abdominal extension consistent with recent delivery. He noted a vaginal tear and concluded that she had been defiled, given her age. He produced the P3 form (PEX 2), the PRC form (PEX 3), and treatment notes. During cross examination, he stated that he did not obtain information from PW1 before examining her. He confirmed that she had

delivered at Sololo Mission Hospital, where he did not work, and that she was only brought to him for examination afterwards. He added that the evidence of defilement was that she had given birth while underage, but the girl did not tell him who had defiled her. 10. PW6, P.C. Kirui Charles, stated that he was a police officer attached to Sololo Police Station and that he took over investigations from P.C. Daki, who had been transferred. He testified that the initial investigating officer received the complaint on 24 th August 2024, when PW1 and PW2 reported the matter to the police, two days after PW1 had delivered a baby girl at Sololo Mission Hospital. He stated that upon inquiry by the initial investigating officer, PW1 disclosed that the appellant was responsible for the pregnancy. His investigations later established that on diverse dates in November 2023, while PW1 was charging their D-light torch at Ramata Guest House, she was lured into one of the rooms by the appellant and defiled. PW1 did not raise alarm due to fear and did not report to her parents because of religious and customary reasons, as girls who get pregnant may be declared outcasts. He produced a certified copy of PW1's birth certificate (PEX 1), which showed that the victim was 15 years old at the time of the offence. During cross examination PW6 confirmed that he did not witness the offence but relied on investigations. He stated that the complainant gave birth at Sololo Mission Hospital, and that a P3 form can be filled by any registered medical practitioner, not necessarily at the hospital of delivery. He added that the doctor had already testified in the matter and produced the P3 and PRC forms. C. DEFENCE CASE 11. The appellant was placed on his defence and gave unsworn statement. He stated that he lived in Sololo and worked as a watchman at Ramata Guest House. He testified that on 21 st August 2024, PW3 asked him whether he had heard that PW1 had given birth and requested him to assist by going to the hospital and discharging PW1, as he was going to work. The Appellant said that since they were family friends, he went to the hospital, where the doctor asked him if he was taking charge of PW1. He was asked to buy a book, provide her name, and produce his identity card. He then paid the hospital bill and took PW1 home. He further stated that the following day, PW1's Aunt called him and warned that he would see what they would do to him, but he did not respond. On 24 th August 2024, PW4, the chief, came to his place of work and asked him to accompany him to the police station. At the station, he was informed that PW1 had complained against him. He expressed surprise at the allegation, was placed in the cells, and later charged. 12. He further recounted that PW1 testified he had defiled her when she brought a phone to be charged. He said he asked PW1 why she had not screamed, and she replied that he had covered her mouth. He also asked why she had not reported to her parents, and she said she feared reporting. He noted that PW1 returned on 2 nd August 2024, yet he was only arrested on 24 th August 2024, questioning why the complaint was not made immediately. He pleaded his innocence and asked the trial court to discharge him. 13. The learned trial magistrate considered all the evidence adduced and found the Appellant guilty of the offence of defilement and proceeded to convict him under Section 215 of the criminal procedure code. After mitigation, the trial court sentenced the Appellant to serve fifteen years imprisonment. D. THE APPEAL 14. Dissatisfied by the conviction and sentence passed, the Appellant filed his petition of appeal and raised the following grounds of appeal that; a. That the learned trial magistrate erred in law and fact by failing to note that the prosecution did not prove its case to the required standard, since no evidence was adduced to prove the paternity of the child, and a DNA test was necessary to establish beyond reasonable

doubt that the appellant was the father. b. That the learned trial magistrate erred in law and fact by failing to note that the prosecution failed to prove its case beyond reasonable doubt. c. That the learned trial magistrate erred in law and fact by failing to consider the time spent in custody under section 333(2) of the Criminal Procedure Code. d. That the learned trial magistrate erred in law and fact by failing to consider the defence of the appellant. 15. The Appellant prayed that his Appeal be allowed, the conviction and sentence be set aside, and he be set free. E. ANALYSIS AND DETERMINATION 16. The being the first appeal, this court is as a matter of law enjoined to analyze and re-evaluate a fresh all the evidence adduced before the lower court and to draw its own conclusion while bearing in mind that it neither saw nor heard any of the witnesses. See *Okeno versus Republic* (1072) EA 32, *Pandya versus Republic* (1957) EA 336 & *Shantital M Ruwala versus Republic* (1957) EA 570, where the court of appeal set out the duties of the first appellant court. 17. I have examined the Record of Appeal, the grounds of appeal and given due consideration to the submissions by the Appellant and the respondent Counsel and find that the following issues arise for determination; a. Whether the ingredients of the offence of defilement were proven. b. Whether the sentence passed should be interfered with.

- a) Whether the ingredients of the offence of defilement were proven. 18. In criminal cases, the burden of proof lies with the prosecution, and they have to persuade the court either by preponderance of evidence or beyond reasonable doubt that the material facts that constitute their whole case are true, and consequently to have the case established and judgment given in their favour. See *Miller vs. Ministry of Pensions* (1947) 2 All ER, 372, *Republic Vs Edward Kirui* (2014) eKLR, and *Murugan & Another Vs State by Prosecutor, Tamil Nadu & Another* (2008) INSC 1688. 19. Section 8 (1) and (3) of the sexual offence Act No 3 of 2006 provides that; 1. A person who commits an act which causes penetration with a child is guilty of an offence termed defilement. 3. A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years. 20. The offence of defilement is anchored on three essential elements: the age of the victim, proof of penetration, and the proper identification of the perpetrator. The victim must be shown to be a minor, penetration must be established either through direct testimony or medical evidence, and the accused must be positively identified as the person responsible. Age 21. With regards to proving the age of a victim in cases of defilement, the Court of Appeal in *Kaingu Kasomo vs. Republic*, Criminal Appeal No. 504 of 2010 held that; “Age of the victim of sexual assault under the Sexual Offences Act is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim.” 22. Similarly, the Court of Appeal in *Edwin Nyambogo Onsongo vs Republic* (2016) eKLR stated as follows in respect of proving the age of a victim in cases of defilement: “... the question of proof of age has finally been settled by recent decisions of this court to the effect that it can be proved by documents, evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence,

among other credible forms of proof. We think that what ought to be stressed is that whatever the nature of evidence preferred in proof of the victim's age, it has to be credible and reliable." 23. The age of PW1 was conclusively established by the production of her birth certificate (PEX 1) by PW6 as exhibit, which showed that she was born on 5 th January 2009 and was therefore 15 years old at the time of the offence in November 2023. This documentary evidence was corroborated by the testimonies of PW1 herself, who produced the certificate, and PW3, her father, who confirmed her age and identified her as his biological daughter. The evidence was further reinforced by PW5, the medical officer, who examined PW1 and confirmed that she was a minor. Notably, the appellant never disputed PW1's age either during trial or in his defence. The court therefore finds that the first ingredient of the offence of defilement, proof that the victim was a minor, was firmly established. ii. Penetration 24. Section 2 of the Sexual Offences Act defines penetration as follows; " The partial or complete insertion of the genital organ of a person into the genital organs of another person." 25. Genital Organs is further defined on the same section as follows " The whole or part of male or female genital organs and for purposes of this Act includes the anus." 26. PW1's testimony that the appellant pulled her into his room at Ramata Guest House, removed her clothes, covered her mouth, and had sexual intercourse with her was corroborated in material particulars. Her account that she was defiled and consequently became pregnant was independently confirmed by PW2 and PW3, who testified that PW1 later missed her periods and eventually delivered a child. This was further reinforced by PW5, the medical officer, who examined PW1 and produced the P3 and PRC forms, which confirmed that she had been defiled and had given birth. The corroboration therefore lay in the consequences of the act resulting to pregnancy and medical findings which aligned with PW1's narration and established proof of penetration beyond reasonable doubt. As such, the trial magistrate cannot be faulted for arriving at the finding that indeed penetration had been proved. iii. Identification 27. Sexual offences, by their very nature, are committed in secrecy and away from the public gaze. Unlike other offences where independent eye-witnesses may readily be available, it is rare to find such testimony in cases of defilement. The court must therefore rely primarily on the complainant's direct evidence, which, where possible, is supported by medical findings and other circumstantial evidence. 28. PW1 gave a clear and consistent account that it was the Appellant, who pulled her into his room at Ramata Guest House and had sexual intercourse with her. She knew him well prior to the incident, as he worked at the Guest House and was a familiar figure to her. Her identification was therefore based on prior familiarity and not on fleeting or mistaken observation. 29. The appellant in his defence did not contest that PW1 knew him or that she had identified him as the perpetrator. His response focused instead on questioning why PW1 had not screamed, why she had delayed reporting to her parents, and why the complaint was not made immediately after her return on 2nd August 2024. These issues went to credibility and timing, but they did not challenge the fact of identification. In his submissions before this court, the appellant similarly did not dispute that PW1 had identified him as the perpetrator. His arguments focused instead on the absence of a DNA test to prove paternity of the child and on the timing of the medical examination, which he

claimed was of little value since it was conducted months after the alleged incident. However, these arguments do not touch on the issue of identification. At no point did the appellant deny that PW1 had named him or that she knew him. His reliance on DNA was misplaced, as paternity is not an element of the offence of defilement; the offence is complete once penetration of a minor is proved. 30. The trial court correctly observed that the appellant did not dispute that the complainant knew him well even before the alleged incident. His defence was that he had been framed, yet he offered no motive or explanation as to why the minor would falsely accuse him. A bare allegation of framing, unsupported by evidence or reason, cannot displace the consistent and credible testimony of PW1.

- b. Whether the sentence passed was harsh 31. Section 8(3) of the sexual offences Act , No 3 of 2006 provides that a person who commits an offence of defilement with a child aged twelve years and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years. The trial court did find that PW1 was born on 5.01.2009 and thus was 15 years as the time of the incident. He therefore sentenced the appellant to serve a sentence of fifteen (15) years under Section 8(4) of the sexual offences Act , No 3 of 2006. 32. In Republic Vs Joshua Gichuki Mwangi; Initiative for strategic litigation in Africa (ISLA) & 3 others (Amicus Curiae),{2024} KESC 34 (KLR) the Supreme court reiterated its decision in Muruatetu II that the sentences in the Sexual offences Act were legal and went on to overturn a reduction of sentence imposed by the Court of Appeal. 33. In Ndungu Vrs Republic (Criminal Appeal No 57 of 2019),(2025) KECA 1094 (KLR), the court of appeal held that; “ The above provision falls into the category of statutory provisions which create mandatory maximum/minimum sentences. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum sentence is laid down, the sentencing court has no option but to impose a sentence, “not less than” that the sentence provides for. Therefore, the words, “not less than” must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 8(3) of the sexual offences Act , these words must be understood to mean the offence under Section 8(3) is punishable with a minimum of 20 years. 34. The sentence passed is what the law provides for and it has not been shown that the said sentence was excessive and/or harsh nor was there any misdirection by the trial court in handing down the same. Be that as it may, the appellant also raised the point that he ought to benefit from the provision of Section 333(2) of the Criminal procedure code, which provides that the period served in remand be considered as part of the sentence passed. 35. The Appellant was arrested on 24.08.2024 and though was granted Bond during trial, he was unable to get a surety. He was sentenced 07.08.2025 and thus spent one year in remand. Article 27(1) of the Constitution provides that; every person is equal before the law and has the right to equal protection and equal benefit of the law. The trial Magistrate did not specify when the sentence shall start running and that was an error, which must be corrected. D. DISPOSITION 36. The upshot, having considered the entire record of appeal and parties’ submissions, I do find that the Appeal as against conviction and sentence fails and is hereby dismissed. 37. The Appellants sentence

will start running from 24.08.2024, when he was initially arrested. 38. Right of Appeal 14 days. 39. It is so ordered. JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MARSABIT THIS 31ST..... DAY OF AUGUST 2026. FRANCIS RAYOLA OLEL JUDGE DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS ...31ST..... DAY OF AUGUST, 2026. In the presence of:- Appellant For O.D.P.P Court Assistant

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