

KENYA / JUDGMENT

Ikatwa v Republic [2026]

KEHC 13169 (KLR)

[2026] KEHC 13169 (KLR)

COURT

High Court

BEFORE

PK Rotich

CASE / FILE NUMBER

Criminal Appeal E052 of 2024

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Ikatwa v Republic (Criminal Appeal E052 of 2024) [2026] KEHC 13169 (KLR) (13 July 2026)
(Judgment) Neutral citation:

[2026] KEHC 13169 (KLR) Republic of Kenya In the High Court at Mombasa Criminal Appeal E052 of 2024 PK Rotich, J July 13, 2026 Between Danson Murunga Ikatwa Appellant and Republic Respondent

Judgment

1. The appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offence Act No. 3 of 2006. The particulars of the offence are that on 6th day of May, 2021 at Makupa area in Mvita Sub- County within Mombasa County, the accused, intentionally and unlawfully caused his penis to penetrate into the anus of GM a child aged 15 years. 2. In the alternative the accused is charged with 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 alternative count are that on 6th day of May, 2021 in Mvita Sub-county within Mombasa County, the appellant, intentionally and unlawfully caused his penis to touch the anus of GM a child aged 15 years. The particulars of the alternative count are that on the 6th May, 2021 at Makupa area in Mvita Sub- County within Mombasa County, the appellant, intentionally and unlawfully, caused his penis to touch the anus of GM a child aged 15 years. 3. The trial court considered the evidence of 56 prosecution witnesses and 3 defence witnesses and found the accused guilty of the offence of defilement. Upon conviction, the accused was sentenced to serve 20 years imprisonment. 4. Being dissatisfied with the judgement of the trial court, the appellant preferred this appeal. The appeal is based on 11 grounds which can be summarized in 2 grounds. The two grounds are as follows: - a. That the Learned Trial Magistrate erred in Law and fact in failing to find that the prosecution had not proved their case beyond reasonable doubt. b. The Learned Trial Magistrate mis-interpreted the applicable law and applied wrong principles. 5. PW1, the

complainant, GM stated he stays at Makupa with his mother Mary Kemunto. PW1 also stated that he is a student at M. Primary School and he was born in the year 7/11/2005. PW1, further, stated he knows the appellant and that he was the caretaker of their plot. On 6/5/2021 at around 3 pm, PW1 stated, he was outside their house and Danson asked him for a USB drive and asked him to collect it later. PW1, further, stated he went to appellant's house, entered his house and he closed the door. PW1 also stated the accused also asked him to remove his clothes but he refused. He was wearing a shirt and a pair of shorts. The appellant, however, PW1 stated, threatened him with a knife and said he would kill him if he refused and asked him to comply and lie down. PW1, further, stated he complied and he lowered his trousers to his knees and the appellant 'raped' him. In this regard, PW1 explained that the appellant inserted his penis into his anus and when he was done, he gave him tissue to wipe himself and he wiped his anus. When he wiped his anus, PW1 stated, there was jellylike substance. Thereafter, PW1 stated, the appellant told him not to tell anyone what happened, opened his door and asked him to go home. On 9/5/2021, PW1 stated, Danson (appellant) asked him to collect the USB drive and when he went, he again closed the door and asked to suck PW1's penis and he declined. He again, PW1 stated, threatened him with a knife and asked him to remove his clothes, which he did and the appellant sucked his penis. The appellant, PW1 stated, gave him a small piece of cloth to wipe himself and warned him not to tell anyone what happened and he took the USB and left. As he left, PW1 stated, he met a crowd of people and one man in the crowd asked him why he usually visits Danson's house and a woman called Benter joined them. He was given a seat. PW1 stated he was first hesitant to tell them what happened but he later told them what had happened. 6. PW1, further, stated at the time of the incident his mother, had travelled to Eldoret to visit his ailing grandmother but Benter told his mother what happened. When his mother travelled back on Monday, PW1 stated, she picked him from school and took him to Coast General Hospital where he was examined and later taken to Makupa Police station where he recorded a statement. Subsequently, PW1 and his mother also led police to where Danson lived and he was arrested. 7. PW2, Mary Benter Okuku, lived at Makupa and is a teacher at Makupa Primary School. On 14/5/2021, PW1 stated, she was at home for Idd Ulfir holidays and she went to buy milk and bread. On her way back, PW2 stated, he heard some noise from the opposite plot and its gate was open. She also saw a crowd that had gathered and she moved closer. PW2, further, stated she saw GM (PW1) whose mother was her former colleague and he was summoned by several people and GM was crying. PW2, further, stated PW1 was scared and said Murunga (Appellant) always defiled him. PW2, also stated he took the boy away to his mother's house and informed her about the matter. 8. PW3, the complainant's mother, stated that on 20/5/2021 he took the boy to Coast General Hospital and examinations showed injuries on his anus. On cross-examination, PW3 stated she had no dispute with the appellant. On further cross-examination, PW3 stated he had known the appellant for 2 years and that he was a caretaker and close to her son. 9. PW4, Dr. Julius Munene is a doctor at Coast General Hospital. He stated the complainant's PRC was filled on 15/5/2021. He produced the complainant's PRC form (P. Exhibit 2). PRC form indicates that the complainant had healed lacerations on his anus. He also produced the complainant's P3

form (P. Exhibit 3) with the same contents as the PRC form. 10. PW5, No. 84887 PC Cpl. Rael Rurice, based at Kwale Police Station produced the complainant's Birth Certificate (P. Exhibit 1). The certificate shows the complainant was born on 7/11/2005. 11. In his defence, DW1 the appellant, stated he was a matatu driver and had worked for 15 years. He, further, stated he was aged 40 years. On 6/5/2021, DW1 stated, he worked up to 5:00 pm and headed to work. The matatu he had drove, DW1 stated, plied Chande – ferry Route. At 10:00 am, DW1, stated, he was still at work and at 5:00 pm he was still at work and got home at 8:00 pm. He, further, stated, that on 9/5/2021 at 10:00 am he was at work and at 2:00 pm he was still at work and he got home at 8:10 pm. He also stated that he did not know the complainant and that he resided with his wife and sister. On both days mentioned above, DW1 stated, he left his sister and wife in his house. 12. DW2, Rose Aluga, stated that she resides in Bamburi. In 2021, DW2 stated, she resided at Majengo with Roe and Danson. DW2, further, stated that Danson is her husband and that he had lived with him for 2 years. On 6/5/2021, DW2 stated, Danson left home at 6:00 am and went back home at 7:00 pm and that he did not come during the day. On 9/5/2021, DW2, stated, the appellant left home at 6:00 pm and went back at 7:30 pm. DW2, further, stated she had never seen the appellant come with a child to their house. 13. DW2, Rose Alusa, stated she resided in Majengo, Kingoroni with his brother, the appellant and his wife. She stated that Murunga, the appellant, was a Matatu driver who left home at 6:00 am and would return home at 7:30 pm. On 6th May, 2021, DW1 stated, he left home at 6:00 am and went back at 8:00 pm. DW3, further, stated she did not see him at 10:00 am, 1 pm and 4 pm. She also stated that the same routine applied on 9th May, 2021. DW3, further, stated she did not leave the house during the day and that the appellant never brought any child to the house. 14. The issue for determination in this matter is whether the appellant defiled the complainant. This being 1st appeal, the court has jurisdiction to revisit the evidence tendered in the lower court afresh, evaluate the same and come to own conclusion, bearing in mind that the lower court had the advantage of observing the demeanour of witnesses and give due allowance to that. (see Mark Oiruri Mose -vs- Republic (2013)eKLR) 15. Section 8(1) of the Sexual offences Act provides as follows: “ A person who commits an act which causes penetration with a child is guilty of an Offence termed defilement”. Section 8(3) of the Act provides: “ 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 not less than twenty years”. 16. The ingredients of defilement were set out in the case of Charles Wamukoya Karani v Republic Bungoma HC Criminal Appeal No. 720 of 2013 the court stated: “ The critical ingredient forming the offence of defilement are the age of the complainant, proof of penetration and positive identification of the assailant” 17. In this case the PW1 produced a copy of his birth certificate of complainant (P. Exhibit 1) which shows that the complainant was born on 7/11/2025. He was, therefore, aged 15 years on the date of the subject incidents herein. It is noted that the age of the complainant was not contested by the defence. 18. On proof of penetration, the complainant stated that on 6/5/2021 at around 3:00 pm he was outside their house and the appellant asked him for a USB drive and asked him to pick it later. The complainant, further, stated he entered the appellant's house and he closed the door and asked him to remove his clothes. He wore a shirt and a pair of shorts. He

refused, the complainant stated, but the appellant threatened him with a knife that he will kill him if he did not comply. PW1, further, stated he complied and lowered his trouser to his knees and the appellant inserted his penis into his anus. When, he was done, PW1 stated the accused gave him tissue to wipe himself and he wiped his anus which had jellylike substance. The evidence of the complainant is corroborated by the evidence of PW4, Dr. Julius Munene a doctor based at Coast General where the complainant was examined. The doctor produced the complainants PRC form (P. Exhibit 2) and P3 form (P. Exhibit 3). The medical documents had healed laceration at 6:00 o'clock. 19. PW1 stated he knows the appellant and that he was the caretaker of their plot. He described him by his first name Danson. PW3, the complainant mother. who had travelled to Eldoret during the time of the incident said he had known the accused for 2 years and he was the caretaker of their plot and was close to her son. This court finds that the complainant and her mother, PW3 identified the appellant by way of recognition. 20. In his defence, the appellant gave the defence alibi at the defence stage without thus denying the prosecution a chance to rebut the same. He stated he is a matatu driver and was at work on the date and time of the alleged offence herein. His defence was supported by DW2 who said is the appellant's wife and sister DW3. The appellant also stated he did not know the complainant. 21. It is, however, my finding that defence which came too late in the day was weak. The accused did state the registration number and owner of the matatu he drove. He did show that he even had any driving licence. No evidence from owner or colleagues to support the appellant's evidence. On the other hand, the evidence of the prosecution was cogent and was not shaken by the defence. 22. It is my finding that the trial magistrate did not err in finding the appellant guilty of offence of defilement. This court, therefore, declines to interfere with judgement of the trial court. The upshot of my findings above, is that this appeal lacks merit and the same is dismissed. 23. Right of appeal within 14 days. DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS THIS 13TH DAY OF JULY 2026. Hon. P. K. Rotich JUDGE In the presence of: The Appellant Sirima for DPP CRIMINAL APPEAL NO. E052 OF 2024 JUDGEMENT 2 | Page (Danson Murunga Ikatwa -vs-Republic)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/13169>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/ikatwa-v-republic-2026>

Prepared on 27 October 2026 · Esheria