

KENYA / JUDGMENT

Njoroge v Republic [2025] KECA 2087 (KLR)

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COURT

Court of Appeal

BEFORE

S ole Kantai, JW Lessit, A Ali-Aroni

CASE / FILE NUMBER

Criminal Appeal 58 of 2018

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Njoroge v Republic (Criminal Appeal 58 of 2018) [2025] KECA 2087 (KLR) (28 November 2025)
(Judgment)

Neutral citation:

[2025] KECA 2087 (KLR)

Republic of Kenya

In the Court of Appeal at Nyeri

Criminal Appeal 58 of 2018

S ole Kantai, JW Lessit & A Ali-Aroni, JJA

November 28, 2025

Between

Raphael Ngethe Njoroge

Appellant

and

Republic

Respondent

(Being an appeal against the Judgment of the High Court at Muranga (Mshila, J.) delivered on 10th November, 2020 in H.C. CRA. No. 44 of 2014)

Judgment

1.This is a second appeal from the conviction of the appellant, Raphael Ngethe Njoroge of the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act by the Principal Magistrates Court at Kigumo. Our mandate on second appeals is on matters of law only as provided under section 361(1)(a) of the Criminal Procedure Code and as stated by this Court in the case of George Morara Achoki vs. Republic [2014] eKLR:“The jurisdiction donated to this Court by Section 361 (1) (a) Criminal Procedure Code in a second appeal like this one is to consider only issues of law raised in the appeal. We must avoid the temptation to deal with matters of fact which have been dealt with by the trial court and re- evaluated by the first appellate court unless it is shown that there has been misdirection on the treatment of facts or the findings of fact are not based on evidence.”

2.The appellant was convicted by the trial court and sentenced to imprisonment for life and his appeal to the High Court in Murang’a HC CRA No. 44 of 2014 was dismissed. As already stated our mandate on a second appeal is on issues of law only. We will visit the facts of the case briefly to satisfy ourselves whether the two courts below carried out their mandate as required in law.

3.The minor, “JW”, (PW1) told the court that she was 9 years old and that on the material day her mother “SN” (PW2) sent her to get milk in the evening and she met the appellant, a person she knew before, who bought her two mandazis and took her to a bush and removed her clothes as well as his clothes. She said that she felt pain and he urinated on her, after which he left her and she went home where she reported the incident to her mother. The mother told the court that when her daughter returned that particular evening and the child informed her of the incident she examined her and saw blood flowing from the private parts and her clothes were bloodied. PW2 reported the matter to the village elder (PW3) and to the police station and then took PW1 to hospital.

4.PW3 was the village elder in the office of the Assistant Chief. He told the court that he received the report of defilement from PW2, who was accompanied by the child and moments later the appellant was brought to the Chief’s office by members of the public.

5.PW4 was the area Chief. He told the court that he was informed of the issue at about 8 p.m. on 27th June, 2012 and before he could reach the scene, the appellant was brought to his office by a mob. PW2 was present at his office when the appellant was brought in and the child restated how she had been defiled by the appellant. PW4 took the appellant to the police station where he was arrested and detained.

6.PW5 was APC Moses Mainae, (Mainae-PW5), who was on duty at the AP Post who received and re-arrested the appellant.

7.PC Wilson Kilel (Kilel-PW6) was the Investigating Officer who was assigned the case. He investigated the matter, recorded statements and preferred charges against the appellant.

8. Joseph Kitema (Kitema-PW7), a clinical officer, testified as PW7. He stated that the minor was examined on 28th June, 2012 and it was noted that there were lacerations on the labia as well as a tear. The hymen was broken and the conclusion was that there was forced vaginal penetration.
9. After the close of the prosecution case the appellant was placed on his defence and gave an unsworn statement where he stated that on 27th June, 2012 people came to his house armed with sticks and began to beat him and accusing him of stealing something. He did not understand what he was accused of stealing and the mob took him to the Chief's office. He said that he was shocked to be charged with defilement. He also said that he owed the complainant money and that was why he was charged with the offence.
10. The trial court delivered judgment on 16th April, 2013 where the appellant was convicted on the main charge and sentenced to life imprisonment.
11. The appellant filed his first appeal where his grounds of appeal were that the prosecution's evidence was contradictory and uncorroborated, that the clothing exhibits were not examined by a government analyst and that he was not examined to prove he had contact with PW1. He sought a review of the sentence.
12. The High Court gave its judgment on 10th November, 2016 and dismissed the appeal entirely.
13. The appellant is now before us on a second appeal where he contends that the prosecution's case was not proved beyond reasonable doubt, that the bloody clothes mentioned were not brought to court and that there was a contradiction between the evidence of the minor and her mother. He also states that he ought to have been examined to be connected to the offence he was charged with and that he lacked the experience to defend himself. He has filed submissions dated 5th May, 2025.
14. The respondent also filed written submissions opposing the appeal.
15. This appeal was heard on 14th May, 2025 on the Court's virtual platform. The appellant was present in person while learned counsel Mr. Naulikha appeared for the respondent.
16. We have considered the record of appeal, the submissions and the relevant statutes.
17. The appellant's overall contention is whether the prosecution's case was proved to the required standard by the evidence before the court or lack thereof. The elements to sustain a charge of defilement were reiterated by this Court in the case of Muthama vs. Republic (Criminal Appeal 3 of 2018) [2022] KECA 1214 (KLR) where this Court observed that: "It is now settled law that to warrant conviction for an offence of defilement under section 8(1) of the Sexual Offences Act, three elements should be satisfied before conviction of an accused person can arise. These are penetration, apparent age of the victim and identity of the perpetrator."
18. We are of the view that the evidence given by PW1 regarding her defilement by the appellant was comprehensive and credible, as noted by the trial court and the High Court on first appeal. She gave direct evidence giving details of how the appellant took her to a bush, undressed her and proceeded to defile her. She did not understand exactly what was happening to her which is

not surprising considering her age. She thought that he had urinated on her. She immediately reported to her mother that the appellant, their neighbour, had done bad things to her and her mother, on examining her, saw blood oozing from her private parts. Her evidence was corroborated by the medical evidence of PW7 who confirmed that the child had been defiled on account of the lacerations to her labia and the tear noted during the examination. The investigating officer, PW6 undertook the investigations, which led to the appellant being charged with the offence and we find that the appellant's defence was a mere denial, which did not dislodge the prosecution's evidence. The trial magistrate believed the child's evidence and by virtue of section 124 of the Evidence Act the magistrate was entitled to convict the appellant if he believed that the child was telling the truth. The magistrate believed that the child was telling the truth.

19. We have also considered the sentence by the trial court. The sentence of life imprisonment was a lawful sentence provided under section 8(1) of the Sexual Offences Act. This appeal has no merit and we dismiss it in its entirety.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF NOVEMBER, 2025. S. ole KANTAI JUDGE OF APPEAL..... J. LESIIT JUDGE OF APPEAL..... ALI – ARONI JUDGE OF APPEAL I certify that this is a true copy of the original Signed DEPUTY REGISTRAR

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