

KENYA / JUDGMENT

Waburiri v Republic

[2026] KEHC 13168 (KLR)

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COURT

High Court

BEFORE

PK Rotich

CASE / FILE NUMBER

Criminal Appeal E031 of 2025

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Waburiri v Republic (Criminal Appeal E031 of 2025) [2026] KEHC 13168 (KLR) (29 July 2026)
(Judgment) Neutral citation:

[2026] KEHC 13168 (KLR) Republic of Kenya In the High Court at Eldoret Criminal Appeal E031 of 2025 PK Rotich, J July 29, 2026 Between William Waburiri Appellant and Republic Respondent (Being an appeal against the conviction and sentence by Hon.P.N.Areri (PM) in Judgement delivered on 8th November 2022 in Eldoret CM SO Case No.E 161 of 2022)

Judgment

1. The appellant is charged with the offence of defilement contrary to Section 8(1) and 8(3) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that on diverse dates between 27th March 2024 and 22nd April, 2024 in [Particulars withheld] village, [Particulars withheld] Location, [Particulars withheld] Sub-County within Uasin Gishu County, the appellant, intentionally and unlawfully caused his penis to penetrate the vagina of C. N. K a child aged 15 years. 2. In the alternative, the appellant is charged with committing Indecent Act with a child contrary to Section 11(1) of the Sexual Offence Act No. 3 of 2006. The particulars of the offence are that on diverse dates between 27th March, 2024 and 22nd April, 2024 in [Particulars withheld] Village, [Particulars withheld] Location, [Particulars withheld] Sub-County within Uasin Gishu County, the appellant, intentionally and unlawfully touched the vagina of C. N. K a child aged fifteen years old with his penis. 3. The trial court considered the evidence of 4 prosecution witnesses and 1 defence witness and found the accused guilty of defilement. Upon conviction, the appellant was sentenced to serve 20 years imprisonment. 4. Being dissatisfied with the judgement and sentence of the trial court, the accused preferred this appeal. The appeal is based on 4 grounds of appeal. a. The trial magistrate erred in law and fact by relying on evidence that is contradictory and fabricated b. That the prosecution failed to prove their case beyond reasonable doubt. c. That penetration was not proved. d. That the appellant was not accorded fair trial. 5. PW1,

CNK, stated she lives in [Particulars withheld], Uasin Gishu County and was a student at [Particulars withheld] Secondary school. PW1, also stated that she was in grade 8 and was aged 16 years. PW1, further, stated that the appellant was her boyfriend and they come from the same village. 6. On 27/3/2024, PW1 stated, at 2:00 pm, she went to the home of appellant and her welcomed her with food and after food, they slept and talked. In the evening, when she wanted to go home, PW1 stated, the appellant refused and they ate again and went to bed. That night, PW1 stated, nothing happened. 7. The following morning, PW1 stated, the appellant left her in the house and locked the door from outside and went back at 7:00 pm. After eating food, PW1 stated, they went to bed. PW1 also stated the appellant's house was one bedroomed divided by a sheet. While on bed, PW1 stated, the appellant removed her clothes and inserted his penis inside her vagina and they had sex. The following day at 5:00 am, PW1 stated, they woke up and ran away to Magut as the appellant feared they will be arrested. At Magut, PW1 stated, they stayed in a rental house paid by the appellant for nearly a month before both of them were arrested and taken to Kipkaren Police Station. At Magut, PW1 stated, they slept together and had sex once. 8. PW1, further stated, she was taken to MTRH by her mother ENK and was accompanied by 2 police officers, where she was examined and taken back to Kipkaren Police station where she recorded a statement. PW1, further, stated that she was born on 8/8/2008. 9. PW2, ENK, PW1's mother lived at [Particulars withheld] in Uasin Gishu County. On 27/3/2024 at 2:00 Pm, PW2 stated, she reported at Kipkaren Police that PW1 was missing. She was missing for 2 weeks. PW2, further, stated that William Waburiri (the appellant) bought vegetables from her and paid Ksh. 100 but she gave him extra money in change and sent a child to go for the extra money. PW2, further, stated the child went back and told the complainant was in the appellant's house cutting vegetables. Thereafter, PW2 stated, she requested a Nyumba Kumi elder to accompany her to the appellant's house where they found him with the complainant. PW2, further, stated that the appellant he had married C and that both the appellant and PW1 were arrested at Lower Kipkaren and taken to Chekalini police station and later to Kipkaren police station. 10. The girl, PW1, stated was also taken to MTRH where she was examined and her P3 filled. 11. On cross-examination, PW2 stated the appellant was ready to pay dowry of Ksh.40,000 for the complainant. 12. PW3, Doctor Irene Simiyu of MTRH Care Department stated the complainant was seen at the hospital on 22/4/2024 vide number 2201534. PW3, further, stated that PW1 admitted having sex on several occasions. On examining her, PW3 stated, she had multiple healed hymenal tears at 3, 6, 8 and 10 O'clock. From the findings, PW3 stated, it is her conclusion that the appellant was defiled. She signed the PW1's P3 form and produce it in court as P.Exhibit 2 13. No. 245179 PC Kerry Singoro, PW4, stated that the complainant's mother presented to the police a birth certificate showing the complainant was aged 15 years. PW4 also stated that the girl, however, appeared to be an adult. PW4 produced the complainant's birth certificate (Exhibit) 1 showing she was born on 8/8/2008. 14. In his defence, the accused stated that he lives in [Particulars withheld] Village and was a form four leaver. In 2023, the accused stated, he did menial jobs and lived with his father. DW1, further, stated that he was arrested while he was doing his usual rounds and taken to police station. At the police station, PW1 stated he found the complainant and her mother

and that he was forced to record a statement. That he forced to say he was with complainant and to agree to pay her fees. On cross-examination, PW1 stated, he had known the complainant for 15 years and that they are neighbours. 15. The issue for determination in this matter is whether the prosecution proved beyond reasonable doubt that the appellant defiled the complainant herein. This being 1st appeal, this 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 witnesses and give due allowance to that. (see. Mark Oiruri Mose -vs- Republic (2013) eKLR) 16. Section 8(1) of the Sexual Offences Act provides: “ A person an act which causes penetration with a child is guilty of an offence termed as defilement” In Section 2 of the Act “penetration ” is defined as: “ ..partial or complete insertion of the genital organs of a person into the genital organs of another person.” Section 8(3) of the Act provides: “ A person who commits an offence of defilement with a child aged 12 years and 15 years shall upon conviction be sentenced to imprisonment for a term not less than 20 years” 17. In JOO - vs- Republic (2015)KEHC 1946(KLR) the court noted that the key ingredients of defilement include proof of the age of the complainant, proof of penetration and proof that the appellant was the perpetrator 18. No. 245179 PC Kerry Singoro PW4 produced the complainant’s birth certificate (Exhibit) 1showing she was born on 8/8/2008.She was, therefore, aged 16 years between 27th March 2024 and 22nd April, 2024 the time of the alleged defilement herein 19. On penetration, the claimant stated that on 27/3/2024 at 2:00 pm, she went to the home of appellant and he welcomed her into his house with food and they ate and talked. In the evening, PW1 stated, the appellant refused to release her to go home and they ate again and went to bed with the appellant for the night but nothing happened. 20. The following morning, PW1 stated, the appellant left her in the house and locked the door from outside and went back at 7:00 pm. After eating food, PW1 stated, they went to bed. While on bed, PW1 stated, the appellant removed her clothes and inserted his penis inside her vagina and they had sex. The following day at 5:00 am, PW1 stated, they woke up and ran away to Magut as the appellant feared they will be arrested. At Magut, PW1 stated, they stayed in a rental house paid by the appellant for nearly a month and had sex before both of them were arrested and taken to Kipkaren Police Station. 21. The evidence of PW 1 is corroborated by the evidence of the evidence PW2, ENK, PW1’s mother On 27/3/2024 at 2:00 Pm at Kipkaren Police that PW1 was missing. PW2 also stated that William Waburiri (the appellant) bought vegetables from her and paid Ksh. 100 but she gave him extra money in change and sent a child to go for the extra money. PW2, further, stated the child went back and informed her that the complainant was in the appellant’s house cutting vegetables. Thereafter, PW2 stated, she requested a Nyumba Kumi elder to accompany her to the appellant’s house where they found him with the complainant. PW2, further, stated that the appellant he had married C and that both the appellant and PW1 were arrested at Lower Kipkaren and taken to Chekalini police station and later to Kipkaren police station 22. The evidence of PW1, further, corroborated PW3, Doctor Irene Simiyu of MTRH Care Department stated the complainant was seen at the hospital on 22/4/2024 vide number 2201534. PW3, further, stated that PW1 admitted having sex on several occasions. On

examining her, PW3 stated, she had multiple healed hymenal tears at 3, 6, 8 and 10 O'clock. From the findings, PW3 stated, it is her conclusion that the appellant was defiled. She signed the PW1's P3 form and produce it in court as P.Exhibit 2. This court finds that there was penetration of the complainant's vagina 23. PW1 stated that the appellant was her boyfriend and they come from the same village. On 27/3/2024 she went to the home of appellant and her welcomed into his house where they ate food, slept and talked for 2 days. Thereafter, they fled to Magut where they stayed in a rental house paid by the appellant for nearly a month before both of them were arrested and taken to Kipkaren Police Station. On his part, the appellant he had known the complainant for 15 years and that they are neighbours. The appellant and complainant, therefore knew each other very well and the complainant identified the appellant as the perpetrator of the subject defilement herein by recognition. 24. The evidence by prosecution was not was not shaken by the appellant. His evidence that he was forced at the police to admit that he was with the appellant and to agree to pay her has no basis 25. The prosecution proved the 3 ingredients of defilement against the appellant beyond reasonable doubt after according the appellant a fair trial. The trial, therefore, did not err in convicting the appellant for defilement under Sec. 8(1) and (3) of the Sexual Offence Act. 26. The upshot of my findings above, is that this Appeal lacks merit and the same is dismissed. 27. Right of Appeal within 14 days. DATED, SIGNED AND DELIVERED ONLINE VIA MS TEAM, THIS 29 TH DAY OF JULY 2026. HON. P. K. ROTICH JUDGE In the presence of: Appellant Mr. Mwaita holding brief for Ms. Kirenge for DPP

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Prepared on 27 October 2026 · Esheria