



**Okonya v Republic (Criminal Appeal E004 of 2024)
[2025] KEHC 2583 (KLR) (Crim) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL APPEAL E004 OF 2024

AB MWAMUYE, J

FEBRUARY 6, 2025

BETWEEN

JOSHUA BARASA OKONYA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal against the Judgment, Conviction and Sentence of the Hon. H. Onkwani (SPM) delivered on 14th December, 2023 in S.O Case No. 135 of 2016)

JUDGMENT

1. The Appellant, Joshua Barasa Okonya, was charged with the offence of Defilement Contrary to Section 8(1), as read with Section 8(3) of the [Sexual Offences Act](#), 2006. The particulars of the offence as stated on the Charge Sheet were that on diverse dates between 26th May 2019 and 30th May 2019 in Embakasi the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of EMM, a child aged 14 years. The Appellant was also 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 alternative count was that on diverse dates between 26th May 2019 and 30th May 2019 in Embakasi the Appellant, intentionally and unlawfully touched the Vagina of EMM, a child aged 14 years with his penis.
2. The Appellant pleaded not guilty. The prosecution called 4 witnesses; the Appellant was put to his defence. The Appellant was subsequently convicted and sentenced to serve 20 years imprisonment for the offence of defilement.



3. Having set out the background to the matter, this Court's duty is to evaluate and scrutinize the evidence and proceedings on record and reach its own independent conclusion as espoused in *David Njuguna Wairimu V Republic* [2010] where the Court of appeal held: -

“The duty of the first appellate Court is to analyze and re-evaluate the evidence which was before the Trial Court and itself come to its own conclusions on that evidence without overlooking the conclusions of the Trial Court. There are instances where the first Appellant Court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower Court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the Court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.

4. I have considered the Trial Court's proceedings, the Petition of Appeal, the Appellant's submissions and the Respondent's Submissions and I identify issues for determination as follows: -
 - a. Whether the elements of the offence of defilement were proved beyond reasonable doubt as required in law;
 - b. Whether the sentence was harsh and excessive under the circumstances.

Whether the elements of the offence of defilement were proved beyond reasonable doubt as required in law

5. To sustain a conviction in a charge of defilement, the prosecution is required to prove elements of age of the complainant, penetration and identification of the assailant beyond all reasonable doubt. This position was held in the case of *Charles Wamukoya Karani v Republic*, Criminal Appeal No. 72 of 2013 where it was held: -“The critical ingredients forming the offence of defilement are; age of the complainant, proof of penetration and positive identification of the assailant.”
6. Additionally, Section 8 (1) and (3) of the *Sexual Offences Act* provide as follows: -
 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.
7. On the age of the complainant, PW1 testified that she was born on 10.02.2005 . Further, PW4 produced her birth certificate which confirmed that she was 14 years at the time of the offence. This was also not contested at the Trial Court. The age of the complainant was therefore properly proved and the charge under Section 8 (1) and (3) of the *Sexual Offences Act* properly preferred.
8. On the element of element of penetration, the Complainant narrated how she went to the Appellant's place and spent the night at his place. They had romance and kissed. They had intercourse and did not use a condom. She further stated that she was a virgin and started feeling pain when the Appellant inserted his penis into her vagina. They slept and stayed together even the following day. They once again had sex without a condom. The Appellant asked her to go home thereafter.
9. Further the medical reports corroborated this. PW3, produced the P3 form which showed that the complainant's vagina had a moist whitish discharge, hymen had old tears at 4 O'clock. The laboratory high vaginal swab showed degenerated spermatozoa. Therefore, the second element of penetration was proved beyond reasonable doubt.



10. Regarding the identification of the perpetrator, it was not disputed that the Appellant was well known to the victim. The Appellant went to the same church with the minor and the Appellant was their videographer. There is therefore no doubt that the Appellant was properly identified as the perpetrator of the offence of defilement.
11. I therefore find that all the elements of the offence of defilement were proved beyond all reasonable doubt and the evidence tendered was sufficient to sustain a conviction.

Whether the sentence was harsh and excessive under the circumstances

12. The Appellant contended that the sentence was excessive given the circumstances of the case herein. Section 8 (3) of the *Sexual Offences Act* No. 3 of 2006 provides as follows:

“ 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.
13. I find that the sentence of 20 years imprisonment meted upon the Appellant by the Trial Court was neither harsh nor excessive considering the aggravating factors of the case.
14. From the foregoing analysis, I am satisfied that the Appellant was convicted on strong evidence and the prosecution discharged the burden of proof beyond reasonable doubt. I therefore find no merit in the appeal. In the result, I affirm the judgement of the Court below and dismiss the appeal in its entirety.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2025.

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BAHATI MWAMUYE

JUDGE

