



REPUBLIC OF KENYA



KENYA LAW
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**Awuonda v Republic (Criminal Appeal E084 of 2024)
[2025] KEHC 2804 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E084 OF 2024
DR KAVEDZA, J
MARCH 12, 2025**

BETWEEN

KEVIN AWUONDA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. M. Maroro (S.P.M) on 18th March 2024 at Kibera Chief Magistrate's
Court Sexual Offences case no. 125 of 2022 Republic vs Kevin Awuonda)*

JUDGMENT

1. The applicant was charged and after a full trial convicted for the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act*, No 3 of 2006. The particulars of the offence as per the charge sheet were that on diverse dates between 5th and 8th November 2022 in Kibra Sub-County, within Nairobi county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of DA a female child aged 12 years. He was sentenced to serve 20 years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his amended petition of appeal grounds of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. That the ingredients of the offence charged were not proved beyond reasonable doubt. Further, the trial court failed to consider the plausible defence raised by the appellant. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in *Okeno v R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the findings of the trial court but bearing in mind that it never saw the witnesses testify.



4. To succeed in a prosecution for defilement, it must be proven that the accused committed an act that caused penetration with a child. "Penetration" under Section 2 of the Act means, "the partial or complete insertion of the genital organs of a person into the genital organs of another person."
5. Further, section 8(1) and (3) of the [Sexual Offences Act](#), No 3 of 2006 provides thus: -
 8. Defilement
 - (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.
6. The prosecution called four (4) witnesses in support of their case. It was the prosecution's case that on 5th and 8th November 2022, DA. (PW1), born 10 November 2010, went to her neighbour, the appellant known as 'Mama Junior' or Awounda, to boil water due to a faulty jug at home. She testified first, recounting how she knocked on his door, and he let her in, instructing her to go to the kitchen.
7. Other children, Shanice, Sharmy, Shallow, Fabby, and another girl, were present, but he sent them out and locked the door. He then directed the complainant to his aunt's bedroom, where he was initially drinking tea in the sitting room. He later entered, trapped her, and said she could not escape. The appellant pushed her onto the bed, removed her trousers and underwear, and then his own clothes which were a trouser and grey shorts. After briefly leaving to drink tea, he returned, removed his shorts, and penetrated her vagina with his penis while she lay face-up.
8. The complainant recounted that she did not scream, noting he had done these multiple times, often on Saturdays. The first time hurt, but later it did not. He warned her not to tell anyone. She reported it to her mother after three incidents, leading to a hospital visit and a police report. She identified him as a close neighbour.
9. On cross-examination, the complainant confirmed three incidents of sexual intercourse between herself and the appellant and his instructions to stay silent.
10. As discussed in the Kenya Judiciary [Criminal Procedure Bench Book 2018](#) paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
 - "94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
 95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, [Evidence Act](#)). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No 187 of 2009; *Julius Kiunga M'biritia v R* High Court at Meru Criminal Appeal No 111 of 2011).



96. The evidence of a child, sworn or unsworn, received under section 19 of the *Oaths and Statutory Declarations Act* is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), CoK”
11. The complainant’s testimony did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the child was telling the truth.
 12. The trial magistrate observed that the complainant's testimony was consistent and unwavering. The court found the complainant to be an honest witness, whose evidence remained coherent throughout the proceedings. Furthermore, the appellant did not deny knowing the complainant. The trial court determined that the complainant had no motive to fabricate the incident. Her evidence, subjected to cross-examination, remained credible and consistent. Consequently, the appellant’s identification by recognition was deemed reliable, and the court was satisfied that the appellant was properly identified.
 13. On additional corroborating evidence, PW2, the complainant’s mother testified that on 8th November 2022, Mama Oscar told her daughter. Frequently visited the appellant’s house, and other children were sent out when she arrived. On 22nd November, after questioning her, she revealed the appellant’s “bad behaviour” (defilement). PW2 confronted him with his sister present; he admitted touching the complainant’s breasts and sought forgiveness. Police advised PW2 to delay further questioning until the complainant. Finished her Grade 6 exams, after which a P3 form was issued. PW2 noted complainant’s silence stemmed from the appellant’s threats.
 14. PW3, John Njuguna from Nairobi Women’s Hospital, testified on behalf of Emma Wamucia and Job Oyaro who examined the complainant on 9th November 2022. The examination revealed no recent injuries but a broken hymen, indicating healed blunt penetration, with no STIs. He presented medical exhibits, noting three incidents between the 5th and 8th of November.
 15. The evidence by the prosecution leaves no doubt that the ingredient of penetration was proved beyond reasonable doubt.
 16. PW4, the investigating officer from Jamhuri Police Station, recorded the case on 24 November 2022 at 3:00 pm. She confirmed DA’s account of multiple assaults between 5 and 8 November, supported by a birth certificate proving the complainant’s age. The appellant was arrested at 8:00 pm, living on the same plot as the complainant with his sister.
 17. In his defence, the appellant testified that he was a student at the Technical University of Kenya. He claimed that on 5th November 2022, he was working at Green Park Fun Fair Ground. At 7:40 am, the complainant asked to heat water, but he refused, sent her away with other children, and left. That evening, PW2 accused him of defilement, which he denied, asserting he was at the park all day. During cross-examination, he admitted knowing the complainant well, said they had no issues with her mother, and confirmed the complainant often visited his home in the evenings but denied locking her inside.
 18. The trial court evaluated the defence and deemed it implausible and unconvincing. Upon careful analysis of the evidence, I have independently reached the same conclusion, finding the defence lacking credibility and failing to cast doubt on the prosecution’s case.
 19. On the age of the complainant, the trial court considered the copy of her birth certificate that was produced. The birth certificate indicated that the complainant was born on 10th November 2010. She



was therefore twelve (12) years old at the time of the offence. There is therefore no doubt that the complainant was a child.

20. In the appellant's submissions, he argued that the trial court's judgment erroneously referenced one Wycliffe Ong'ondo Sambaya in its heading, rather than him, Kevin Awuonda. However, a closer examination of the judgment reveals that this was merely a typographical error confined to the title. The body of the judgment, starting from the first paragraph, correctly identifies the accused(now the appellant) as Kevin Awuonda.
21. Notably, the name Wycliffe Ong'ondo Sambaya does not appear anywhere else in the trial court's record, underscoring that this was an isolated mistake. Such an error is curable, as it did not prejudice the appellant or obscure the fact that the judgment pertained solely to him. The substance of the decision clearly addressed Kevin Awuonda, and no substantive injustice arose from this clerical slip. Courts may rectify such minor inaccuracies without affecting the validity of the proceedings, as the intent and application of the judgment remained unambiguous. Thus, the appellant's claim hinges on a superficial discrepancy that does not undermine the trial court's findings or his identification as the subject of its decision.
22. The upshot of the above analysis is that the prosecution proved their case beyond reasonable doubt. The conviction is hereby affirmed.
23. On sentence, the appellant was sentenced to twenty (20) years imprisonment. During sentencing, the court considered the appellant's mitigation and that he was a first offender before sentencing him. The *Sexual Offences Act* provides for a mandatory minimum sentence of twenty years for the offence the appellant is convicted of. The court sentenced the appellant to the minimum sentence provided under the law.
24. As such, I find that the sentence was proper in light of the supreme court decision in Petition E018 of 2023 *Republic v Joshua Gichuki Mwangi*. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Mbote for the Appellant

Timoi h/b for Mutuma for the Respondent

Tonny Court Assistant

