



REPUBLIC OF KENYA



KENYA LAW
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**Kamanza v Republic (Criminal Appeal E002 of 2024)
[2025] KEHC 2801 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E002 OF 2024
DR KAVEDZA, J
MARCH 12, 2025**

BETWEEN

BENJAMIN KYALO KAMANZA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 19th December 2023 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E044 of 2023 Republic vs Benjamin Kyalo Kamanza)

JUDGMENT

1. The appellant was charged and after a full trial convicted by the Subordinate Court on two counts of defilement contrary to section 8(1) as read with 8(3) of the Sexual Offences Act No. 3 of 2006. He was sentenced to serve thirty (30) years imprisonment on each count. The sentences were to run consecutively.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He contended that the learned magistrate erred by disregarding vital aspects of the case. 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 conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. The prosecution called eight (8) witnesses in support of their case. It was the prosecution's case that on 5th March 2023, PW1 (E.M.), a 12-year-old girl, testified under oath after a voir dire examination. She recounted how the appellant lured her and PW2 (C.M.) into his house under the pretext of sending



- them to the shop. Once inside, he locked the door, forced PW1 onto his bed despite her resistance, removed her clothes, and inserted his penis into her vagina. He then sexually assaulted PW2 similarly, threatening to kill their families if they spoke out. Afterwards, he gave them food and Kshs. 20.
5. PW2, a 13-year-old girl, corroborated PW1's account in her sworn testimony, identifying the appellant in court.
 6. Their mothers, PW3 (JKK) and PW4 EM testified about the aftermath. PW3, PW1's mother, explained that her sons found PW1 at the appellant's house eating food he provided. PW1 was reluctant to return home and, after being beaten by her sister, disclosed that the appellant had sexually assaulted her four times. PW3 reported this to PW1's teacher, leading to hospital visits at Shofco and Coptic, where medical forms (PRC and P3) were issued.
 7. PW4 learned of her daughter PW2's sexual assault from PW3, took her to Coptic Hospital, and received similar medical documentation. Both mothers confirmed the appellant's arrest after PW2 identified him in custody.
 8. PW5, clinical officer Lauren Mwendu Mailu, produced medical evidence. PW1's PRC form (7th March 2023). The findings were that PW1 had, a perforated hymen, and greenish discharge. PW2's PRC form (15th March 2023) a perforated hymen, and yellowish, smelly discharge. The P3 forms for both girls supported these findings that there was vaginal penetration.
 9. PW6 (DK), PW1's sister, testified that the appellant had previously made sexual advances towards her, linking faster ID processing to sexual favours. PW7 (J.M.), PW1's brother, confirmed finding PW1 at the appellant's house, where they were given food.
 10. PW8, Corporal Oreu Ngelechei, the investigating officer, stated that on 8th March 2023, the two minors reported their defilement. The appellant was arrested amid a crowd's attempt to lynch him. An age assessment confirmed that PW1 was 12, and PW2's birth certificate was produced in court.
 11. In his defence, the appellant testified that at the material time, he was in Kitui. Additionally, he claimed that PW3 had hired goons armed with pangas and rungas but he managed to seek refuge in a neighbour's house where he was arrested.
 12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
 13. 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."
 14. 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.
 15. In the instant matter, the testimony of PW1 and PW2, the complainants, provided a detailed and mutually corroborative narrative establishing that the appellant penetrated PW1's vagina with his penis and subsequently committed an identical act against PW2. This was further substantiated by



- PW5, a medical officer from Coptic Hospital, who presented medical evidence corroborating the complainants' accounts of penetration. The element of penetration was sufficiently proved.
16. The ages of the complainants were conclusively established. PW3, mother of PW1, attested that PW1 was born on 24th July 2011, while PW4, mother of PW2, confirmed PW2's birthdate as 10th August 2009. These assertions aligned with the testimony of Corporal Oreu Ngelechei, the investigating officer, who conducted an age assessment for PW1 and produced PW2's birth certificate. Accordingly, PW1 was 12 years and PW2 was 14 years at the time of the offense, leading the trial court to determine that both were minors under applicable law.
 17. On the issue of identification, PW1 had multiple prior interactions with the appellant, testifying to four instances of forcible intercourse before his apprehension, rendering her identification one of recognition. Both PW1 and PW2 positively identified the appellant in open court, corroborated by PW3, who had engaged the appellant's assistance in obtaining birth certificates for her children. Consequently, the possibility of mistaken identity was precluded.
 18. The foregoing analysis rightfully demonstrates that the prosecution aptly discharged their burden of proof beyond reasonable doubt. The appellant's defence did not cast doubt on the prosecution's case and was rightly dismissed. Consequently, the appellant's conviction is affirmed.
 19. On sentence, the appellant was sentenced to serve thirty years imprisonment on each count, to run consecutively. During sentencing, the court considered the appellant's mitigation, the fact that he was a first offender, and the pre-sentence report on record. The court exercised discretion and passed a lawful sentence. In the premises, I see no reason to interfere with the sentence.
 20. 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:

Appellant Present

Timoi h/b for Mutuma for the Respondent

Tonny Court Assistant

