



REPUBLIC OF KENYA



**Muchiri alias Mzee Wa Kijiji v Republic (Criminal Appeal
179 of 2023) [2025] KEHC 3676 (KLR) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 179 OF 2023
DR KAVEDZA, J
MARCH 24, 2025**

BETWEEN

PATRICK MACHARIA MUCHIRI ALIAS MZEE WA KIJJI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 27th April 2023 by Hon. E. Boke (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case No. 86 of 2019 Republic vs Patrick Macharia Muchiri alias Mzee wa Kijiji)

JUDGMENT

1. The appellant was charged with defilement contrary to section 8(1) as read with 8(2) of the [Sexual Offences Act](#) No. 3 of 2006. He was sentenced to serve thirty (30) years imprisonment and later life imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence in line with his petition of appeal.
2. 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.
3. With the above, I now proceed to determine the substance of the appeal. In his Petition of Appeal, the appellant contended that the evidence adduced by the prosecution was marred by contradictions. That his defence was not considered. He urged the court to quash his conviction and set aside the sentence imposed.
4. The prosecution availed four (4) witnesses in support of their case. PW1,AWN gave sworn evidence after a voir dire testimony. She averred that she was born on 20th March 2008 and was in class 3. She recounted that on 29th August 2019 at 7:30 pm, while playing with three friends outside their home,



- her friends ran ahead for a lost ball. Left behind, the appellant dragged her to his house, pushed her onto his bed, and inserted his penis into her vagina. She endured severe pain but could not scream as he covered her head with a blanket.
5. Afterwards, he told her to dress and threatened to kill her if she spoke. At home, she changed twice due to blood from her vagina. She told her brother, who informed their mother. They went to the police station and were referred to Nairobi Women's Hospital, where she was admitted for four days. The appellant was later arrested. At the police station, PW1 identified him as her attacker and later in court as "Mzee wa Kijiji."
 6. 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. In this regard, the trial magistrate noted that the complainant was consistent and steadfast in his. In addition, their evidence which was subjected to cross-examination remained consistent throughout.
 7. Nonetheless, PW2, SNW, the complainant's mother gave a testimony that corroborated that of the complainant. She noted that the incident had adversely affected her daughter's physical, mental, and emotional health due to the fact that she often bursts out in fits of anger directed towards her siblings.
 8. PW3, clinician John Njuguna, produced the complainant's Post Rape Care and P3 forms, dated 30th August 2019, and a discharge summary from 3rd September 2019. He confirmed she arrived bleeding, with deep vaginal lacerations and a cut near her anus, requiring a five-day hospital stay.
 9. PW4, PC Nancy Gathoni, took the case on 3 September 2019, supporting the complainant and her mother's accounts. After arresting the appellant, an identification parade on 8 October 2019 saw the complainant identify him. PW4 submitted the parade report and the complainant's immunisation card, showing her birth date as 20 March 2008.
 10. At the time of appellant was found to have a case to answer, he absconded court and he was convicted and sentenced in his absence.
 11. The appeal was canvassed by way of written submissions. These submissions have been duly considered and there is no need to rehash them.
 12. 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."
 13. Further, section 8(1) and (3) of the *Act* provides thus: -
 8. Defilement
 - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
 14. In this case, the prosecution provided sufficient evidence to prove penetration occurred. The complainant gave a detailed account in her testimony, explaining how the appellant forced his penis into her vagina. She described the intense pain she felt, which was so severe that she needed surgery and had to stay in hospital afterwards. This was corroborated by the clinician, PW3, who provided



a medical report and discharge summary. These documents confirmed the injuries she suffered, matching her description of the incident and showing the physical harm caused.

15. The complainant's age was established during the trial. PW1, her mother, testified that she was born on 20th March 2008. This was further supported by the investigating officer, PW4, who presented the complainant's immunisation card, which also listed her birth date as 20 March 2008. Based on this, the trial court concluded that she was eleven years old when the offence took place on 29 August 2019. This meant she was legally a child of 11 years at the time of the incident.
16. The identification of the appellant was also affirmed. The complainant took part in an identification parade, and the report from that event was shown in court by the investigating officer. She also pointed him out in court as the person who attacked her, leaving no doubt about his identity.
17. The foregoing analysis rightfully demonstrates that the prosecution aptly discharged their burden of proof beyond reasonable doubt. Consequently, the appellant's conviction is affirmed.
18. The trial court imposed dual sentences upon the appellant, namely thirty years' imprisonment and life imprisonment. The record indicates that on 27th April 2023, the appellant, having absconded, was sentenced in absentia to a term of thirty years. Subsequently, upon his apprehension pursuant to a warrant of arrest, the court, erroneously apprised that no prior sentence had been passed, proceeded to impose a sentence of life imprisonment on 25 September 2024.
19. At the juncture of the imposition of the life sentence, the appellant was already sentenced to thirty years' imprisonment. In consequence, the life sentence was void ab initio and is hereby set aside. The initial sentence of thirty years, imposed on 27 April 2023, remains extant and operative.
20. The sentence of thirty years' imprisonment, as pronounced by the trial court, was lawful and is affirmed. In the premises, the appeal is adjudged to be wholly devoid of merit and is accordingly dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 24TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

