



REPUBLIC OF KENYA



KENYA LAW
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**Omoma v Republic (Criminal Appeal E089 of 2024)
[2025] KEHC 2803 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E089 OF 2024
DR KAVEDZA, J
MARCH 12, 2025**

BETWEEN

VINCENT MUTUA OMOMA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 27th April 2023 by Hon. W. Lopokoiyit (S.R.M) at Kibera Chief Magistrate's Court Criminal Case no. MCSO. E003 of 2022 Republic vs Vincent Mutua Omoma)

JUDGMENT

1. The appellant Vincent Mutua Omoma was charged and after a full trial convicted for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve life imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal, he raised the following main grounds: The appellant challenged the totality of the prosecution's evidence against which he was convicted; he challenged the prosecution never proved penetration of the complainant's genital organ and that he was not properly identified; he argued that his mandatory sentence has been outlawed by new jurisprudence. 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 analyze and re-evaluate the evidence that was before the trial court, and itself 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. To succeed in a prosecution for defilement, it must be proven that the accused committed an act that caused penetration with a child.



5. "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."
6. Further, section 8(1) and (2) 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.
 - (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.
7. Bearing in mind the above provisions, I will now analyze the evidence on record to ascertain whether the essential ingredients of the offence preferred against the appellant were established to the required standard of proof. Regarding the ingredients,
8. I wish to state at the outset that the importance of proving the age of a victim, proof of penetration, and positive identification of the assailant in sexual offences is paramount.
9. PW1, T.M., an 11-year-old girl born on 22nd February 2010. On 4th January 2022, while home from school for lunch, she was sent by the appellant's friend to fetch water and shut off a tap. She then informed Vinny and helped open his curtains. Suddenly, he gagged her with a cloth, dragged her into his house, and forced her onto his sofa.
10. The appellant stripped off her tracksuit and underwear, removed his trousers, and moved her to his mother's bed. He tied her legs to the bed with a long cloth and sexually assaulted her by inserting his penis into her vagina. When her mother called out, he bound her legs together and leapt to another bed, pretending to sleep. Her mother pushed past a 10-litre jerrycan blocking the door and questioned him. PW1 removed the gag, screamed, and neighbours and police arrived.
11. Police untied PW1, instructed her to dress, and took her to hospital. She recalled the appellant being naked when he pulled her inside. During cross-examination, PW1 clarified that the appellant's friend did not harm her. She stated the appellant undressed her on the sofa, carried her to the bed, tied her left leg to the bedpost, held her hands, and defiled her. In re-examination, she confirmed he gagged her, and she only removed the cloth when her mother intervened.
12. PW1 knew the appellant well as a neighbour who fetched water for her family in exchange for food. The sexual assault occurred in daylight, and she identified him by recognition, not mere chance.
13. I therefore hold that the appellant was properly identified.
14. 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'birithia 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”
15. PW1'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 minor was telling the truth. In this regard, I note that PW1 was consistent and steadfast in her testimony. In addition, her evidence which was subjected to cross-examination remained consistent throughout.
16. Corroborating her evidence, PW2, the minor's mother, testified that on 4th January 2022, she found her door open and called for her daughter, T.M., who had not eaten lunch. Noticing water jerrycans outside left by the appellant who fetched water for her family she entered his house after he did not respond. She spotted T.M.'s school shoes at the door. Pushing inside, despite the appellant claiming he had not seen the complainant, she found her daughter naked, tied to a bed, mouth gagged with a cloth. Furious, she screamed, drawing neighbours who beat the appellant. She had no prior issues with him; he worked for them in exchange for food. Cross-examined, she clarified T.M.'s leg was tied, hands free, and she saw the appellant dressing after jumping off the complainant.
17. PW3, a Kangemi Police Station officer, arrived at the scene with a colleague. A crowd had gathered. Inside, they found the complainant half-naked, tied at the mouth and legs, with the appellant naked nearby. They rescued him from the mob and arrested him. Cross-examined, PW3 said a nyumba kumi member blocked the crowd from entering.
18. PW4, John Njuguna from Nairobi Women's Hospital, produced the PRC form and P3 form, both dated 4th January 2022. The complainant was brought in for defilement, and was calm but had a laceration on her labia majora, bruises on her labia minora, and a hymen tear. No STIs or spermatozoa were found, but the fresh injuries confirmed vaginal penetration. Cross-examined, he noted she had not bathed. On re-examination, he confirmed penile-vaginal penetration.
19. PW5, the caretaker, returned home to find a mob claiming the appellant was caught with a pupil. He identified the appellant but did not enter the house. On cross-examination, he said the water tap was near both homes.
20. PW6, the investigating officer, recorded statements and charged the appellant. He found the complainant tied with a cloth, half-naked, and the appellant naked on a sofa, guarded by neighbours. He produced the complainant's birth notification (Exhibit 1), confirming she was 11, born 22 February 2010. Cross-examined, he noted her leg was tied, she wore only a t-shirt, and the appellant's bed was unmade.
21. In his defence, claimed the complainant entered his house while he slept, telling him to shut off overflowing taps. Awaking to noises, he hid in bed, leaving her on the sofa. He alleged her mother ordered her tied up, denying defilement and citing his friendship with the complainant's father. The trial court considered this defence and dismissed it as baseless.
22. From the record, the prosecution's evidence was consistent on the elements of defilement. PW1 gave a clear account of the events on the material day. PW2 discovery, medical evidence, and police evidence.



The age of the complainant was also proved. The appellant's defence also failed to cast any doubt on the prosecution's case. The appellant's conviction was therefore proper and is affirmed.

23. On the sentence, section 8(2) provides that 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. The prosecution proved that the child was 11 years old.
24. The *Sexual Offences Act* provides for a mandatory minimum sentence of life imprisonment for the offence the appellant is convicted of. The court sentenced the appellant to the minimum sentence provided under the law.
25. As such, I find that the sentence was proper in light of the supreme court decision in Petition E018 of 2023 Republic vs 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:

Appellant Present

Timoi h/b for Mutuma for the Respondent

Tonny Court Assistant

