



REPUBLIC OF KENYA



**Odipo v Republic (Criminal Appeal 8 of 2024)  
[2025] KEHC 2935 (KLR) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2935 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 8 OF 2024  
DR KAVEDZA, J  
MARCH 10, 2025**

**BETWEEN**

**MARK ODIPO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 14th September 2023 by Hon. I. Kabunya (S.P.M) at Kibera Chief Magistrate's Court Criminal Case no. MCSO. E0126 of 2021 Republic vs Mark Odipo)*

**JUDGMENT**

1. The appellant Mark Odipo was charged and after a full trial convicted for the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve twenty (20) years 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 whole of the prosecution's case that it was marred by material contradictions and inconsistencies; he argued that his defence was not properly weighed and considered in light of the totality of the whole evidence.
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 (4) 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.
7. Bearing in mind the above provisions, I will now analyse 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, 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.
8. (PW2), F.R., the complainant stated that she was 14 years old. In November 2021, her mother left her alone at home to go on a trip. During this period, PW2 went to reside with the appellant, Mark, whom she described as her boyfriend. She recalled visiting Mark on 18 November 2021 and staying with him for three days, during which they engaged in sexual intercourse. PW2 admitted to initiating physical contact and acknowledged that she understood sexual activity was an adult act.
9. The appellant questioned PW2 about her failure to return home, but she provided no response. She confirmed that they had sexual intercourse over two days. Upon returning home, PW2 encountered her mother, who was displeased due to PW2's absence. Her mother subsequently took her to her uncle, and together they reported the matter to the local chief. PW2 then directed them to the appellant's residence, after which the incident was reported to the police. PW2 asserted that Mark was her boyfriend, that they had been in a relationship for one month, and that she had met him while he was working as a bodaboda operator in Soweto.
10. PW2's testimony did not require corroboration under the proviso to Section 124 of the [Evidence Act](#) (Chapter 80 of the Laws of Kenya), provided there were reasons to believe the child was telling the truth. In this case, the trial magistrate noted that PW2 was consistent and steadfast in her testimony. Furthermore, her evidence, which was subjected to cross-examination, remained consistent throughout.
11. The appellant was well-known to PW2, who recognized him and had a relationship with him. This was not their first meeting. Therefore, I find that the appellant was properly identified.
12. PW1, the complainant's mother corroborated PW2's evidence. She stated that after returning from travel, she found her daughter, F.H., at home, having missed school. When questioned, F.H. gave no explanation. PW1's sister reported that Veronica had taken F.H., who did not return. PW1 reported this to Muthangari Police Station.
13. On 21 November 2021, PW1 received a call informing her that PW2. was with a friend. She took PW2. to the police station, where she admitted to staying at the appellant's house and engaging in sexual intercourse.
14. PW1 took PW2 (F.H.) to Nairobi Women's Hospital. Examination confirmed defilement. She told the court that PW2 was born on 23 March 2008, and was 13 years old.



15. PW3, John Njuguna, a clinical officer at Nairobi Women’s Hospital, examined PW2 on 23 November 2021. PW2 had a history of leaving home to live with her boyfriend. She was calm, with no physical genital injuries noted.
16. Examination revealed an old, broken hymen with tags, but no recent injuries, pregnancy, or STIs. PW3 produced the PRC form, GVRC form (Exhibit 2(a)), lab report, and P3 form. On cross-examination, PW3 confirmed PW1’s statement that PW2 stayed with the appellant. Though no recent injuries were found, this did not preclude recent sexual activity.
17. Based on the history and evidence, I find penetration sufficiently proven.
18. PW4, PC Mutema from Muthangari Police Station, investigated. On 21 November 2021, PW1 and PW2 reported at 8 a.m. that the appellant defiled PW2, aged 13, after a month-long relationship. PW4 corroborated PW1 and PW2’s evidence and produced PW2’s birth certificate.
19. The complainant’s birth certificate showed she was born on 23 March 2008, making her 13 years old and a child within the law.
20. In his defense, DW1, Mark Odipo, stated that he was a bodaboda operator in Kawangware. On 17th November 2021, while waiting for customers, two plainclothes police officers approached him. He took them to Muthangari, where he was arrested. He later learned a complaint had been filed against him. He claimed his mother was in the same Chama as the complainant’s family and owed money.
21. When his mother and the complainant’s family discussed repayment, they failed to agree. He alleged this dispute led to his arrest. He denied knowing the minor before the case and believed he was falsely accused due to the Chama conflict. He insisted on his innocence, arguing the medical report supported his case.
22. The trial court dismissed his defence as baseless. PW2’s testimony was found truthful and consistent. When weighed against the prosecution’s case, the appellant’s defence did not create any reasonable doubt.
23. Defilement was proven to the required legal standard, and the prosecution’s case was established beyond a reasonable doubt. The conviction for defilement is therefore upheld.
24. On the sentence, section 8(3) provides that 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.
25. During sentencing, the court considered the pre-sentence report, the appellant’s mitigation, and that he was the first offender. The court sentenced the appellant to the minimum sentence provided under the law.
26. 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 10TH DAY OF MARCH 2025**

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**D. KAVEDZA**

**JUDGE**



In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

