



REPUBLIC OF KENYA



KENYA LAW
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**Enima v Republic (Criminal Appeal E082 of 2024)
[2025] KEHC 4495 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E082 OF 2024**

DR KAVEDZA, J

APRIL 7, 2025

BETWEEN

WILSON MOTUNDE ENIMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. E. Boke (S.P.M) on 14th April 2022 at Kibera Chief Magistrate's Court
Sexual Offences Case No. 42 of 2017 Republic v Wilson Motunde Enima)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of 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 life imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He argued that his right to a fair trial was violated. He urged the court to quash his conviction and set aside the sentence imposed.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See *Okeno v Republic* [1972] EA 32).
4. The complainant A.H. gave unsworn evidence after voir dire examination. She told the court that she was six (6) years old. On the material day which she could not recall, after school, she would visit Willy, a man she knew, who lured her with his phone while her mother washed clothes. One day, the appellant undressed her and inserted his penis into her vagina. She was in pain during the incident. Her mother



- (PW2) interrupted, spotting her through a window. The complainant confessed that the appellant had done “bad manners” to her. They sought her grandmother’s counsel before returning home. Later, her mother took her to [particulars withheld] hospital, where Z[particulars withheld] advised a visit to [particulars withheld] the next day. She identified the appellant in court.
5. PW3, the complainant’s mother, testified that on 12th May 2017, while washing clothes outside, her daughter, PW1, returned from school. She instructed her to change, but soon after, PW1 entered the appellant’s house. PW3 called her for food, but she did not respond. Though surprised that the door was closed, she trusted the appellant and continued washing. Later, when she peered through the window, she saw a startled Willie, who claimed the complainant was at the door. PW1 then emerged, stating that Willie had defiled her, marking the third such incident. PW3 took her to her mother-in-law, who found no clear evidence. However, days later, a foul smell from PW1’s private parts led to a hospital visit to [particulars withheld], followed by a report at [particulars withheld] Police Station. PW3 confirmed that PW1 was born on 22nd November 2010.
 6. At the hospital, PW2, Joan Muriuki, a clinical officer, examined PW1 and found her hymen broken, with foul-smelling discharge, redness, and swelling. She treated PW1 and filed the PRC form, which was produced in evidence. PW4, Dr. Joseph Maundu, also examined the complainant, confirming similar findings. He filled and signed the P3 form, which was produced in evidence.
 7. PC Obina Royee, the investigating officer, recorded statements from PW1 and PW3 and produced the complainant’s birth certificate.
 8. In his sworn defence, the appellant denied the offence, stating that he was at work at the material time. He noted that DNA samples were taken, but no results were issued.
 9. 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.”
 10. Further, section 8(1) and (2) of the 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.
 11. The critical element of penetration was comprehensively established through cogent and compelling evidence. The complainant provided a clear and detailed account of the incident, which was corroborated by medical evidence from PW2 and PW4, both medical practitioners. PW2 produced the Post Rape Care (PRC) form, while PW4 tendered the P3 form, which revealed a bacterial infection, foul-smelling vaginal discharge, and a broken hymen. These medical findings unequivocally supported the complainant’s account, reinforcing the prosecution’s case. The combination of testimonial and medical evidence thus sufficiently satisfied this essential ingredient of the offence.
 12. The age of the complainant was another pivotal factor in these proceedings. PW5, the investigating officer, produced the complainant’s birth certificate, confirming her date of birth as 22nd November 2010. This proved that she was only six years old at the material time, placing her within the legal definition of a child and fulfilling another essential element of the charge.



13. The identity of the appellant as the perpetrator was established beyond reasonable doubt. The complainant knew the appellant, a neighbour, and had interacted with him several times. Thus, her identification of the appellant was based on recognition, not mere recollection. This position was further strengthened by in-court identification by both the complainant and her mother, which remained unchallenged and unimpeached.
14. Given the foregoing analysis, the prosecution discharged its burden of proof beyond a reasonable doubt. The complainant's testimony, corroborative medical records, proof of age, and unequivocal identification of the appellant formed a cohesive and unassailable case. Accordingly, the conviction stands affirmed.
15. On sentence, the appellant was sentenced to life imprisonment. During sentencing, the court considered the appellant's mitigation, and the pre-sentence report and meted the minimum sentence provided in law. In the premises, I see no reason to interfere with the sentence.
16. 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 7TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

In the presence:-

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

