



REPUBLIC OF KENYA



**Okello v Republic (Criminal Appeal E060 of 2024)
[2025] KEHC 4490 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E060 OF 2024**

DR KAVEDZA, J

APRIL 8, 2025

BETWEEN

ROBERT OKELLO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
18th January 2024 by Hon. I.M Kabuya (SPM) at Kibera Chief Magistrate's
Court Sexual Offences Case No. E113 of 2022 Republic v Robert Okello)*

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars are that on 11th of November 2022 at [particulars withheld] in [particulars withheld] Sub-county within Nairobi County the appellant intentionally and unlawfully caused his penis to penetrate the vagina of J.C. a child aged 15 years. He was sentenced to serve twenty (20) years imprisonment.
2. Aggrieved, he filed an appeal challenging the totality of the prosecution's evidence against which he was convicted. 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 five (5) witnesses in support of their case. The complainant, JC (PW4), testified under oath that she was born in 2007 in Uganda and arrived in Kenya in October 2022. Three days later, she moved into her aunt's house, the appellant's wife. She alleged that the appellant took her to his room, removed her underwear, and inserted his penis into her vagina. Afterwards, he wiped blood



from her vagina with a handkerchief and warned her not to tell anyone. She immediately confided in her neighbour, Mama [particulars withheld] (PW2, Diana Muya), who advised her to stay silent, saying the appellant would eventually be caught.

5. Three days later, the appellant allegedly assaulted her again. This time, her screams brought Mama [particulars withheld] to the house. Mama [particulars withheld] took her to the hospital, and then to Muthangari Police Station to give statements. The complainant was later moved to a safe house in [particulars withheld]. She identified the appellant in court, and her account matched Mama [particulars withheld]'s testimony, who also identified him.
6. PW1, Margaret Muthoni Gateri, a Child Protection Volunteer, explained how JC came into their care and how the appellant was arrested. PW3, clinician Carolyn Wambui, presented JC's P3 and PRC forms, noting tenderness between her anus and vagina and a whitish vaginal discharge, consistent with penetration. PW5, PC Ayodi, the investigating officer, confirmed the case was reported on 11th November 2022. She issued a P3 form and ensured JC reached the hospital with PW1.
7. In his defence, the appellant denied the charges, claiming JC often skipped school and left home. He said he was summoned to the Chief's camp, informed of the allegations, and charged. DW2, Judith Odhiambo, testified she learned of his arrest from a prosecution witness and described the complainant as a house help who did not attend school. DW3, NEZ, the appellant's daughter, testified after a voir dire that a relative, John, gave the complainant money and invited her to his house.
8. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
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 (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.
 - (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.
11. The prosecution's evidence established the element of penetration. PW4 testified that on the material day, whilst alone with the appellant, he forcibly engaged in sexual intercourse with her. This was corroborated by PW3, the clinician, whose medical findings adduced in court confirmed that penile-vaginal penetration had occurred.
12. Regarding age, I concur with the trial court's verdict. PW4 stated she was born in 2007, consistent with the P3 form tendered in evidence, estimating her at approximately 15 years. Thus, she is a child within the meaning of the law.
13. The issue of identification stands settled. PW4, familiar with the appellant from cohabiting in his household, along with PW2 (the neighbour) and PW1 (the Child Protection Voluntary Officer), unequivocally identified him in open court, leaving no doubt as to his identity.



14. The foregoing demonstrates that the prosecution discharged its burden of proof beyond reasonable doubt. Accordingly, the appellant's conviction is affirmed.
15. Regarding the sentence, the appellant was sentenced to serve twenty (20) years imprisonment. During sentencing, the court considered the appellant's mitigation, the fact that he was a first offender, and the pre-sentence report. The sentence imposed was the statutory minimum and therefore legal. 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 8TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

In the presence of:-

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

