



REPUBLIC OF KENYA



**Anamba v Republic (Criminal Appeal E088 of 2024)
[2025] KEHC 7378 (KLR) (3 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E088 OF 2024
DR KAVEDZA, J
JUNE 3, 2025**

BETWEEN

DAVID ANAMBA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
31st October 2023 by Hon. M. Murage (PM) at Kibera Chief Magistrate's
Court Sexual Offences Case no. 32 of 2020 Republic v David Anamba)*

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 were that on diverse dates between January 2019 and the 11th day of April 2020 at [particulars withheld] area in [particulars withheld] Sub-County within Nairobi county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of L.K a child aged 14 years. He was sentenced to serve twenty (20) years' imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. He contended that his trial was unfair contrary to Article 50 of *the Constitution*.
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 case was as follows; PW1, L.K gave sworn evidence after a voir dire examination. She averred that the appellant was fond of inviting her to his house and having sex with her using a condom,



usually after school. Her mother PW2 JL recalled that on 11th April 2020, she received a call from one of her neighbours informing her that she had seen PW1 going into the appellant's house and that they are usually seen together. She proceeded to his house and when she found them together, she headed together with several other neighbours took her to Muthangari Police Station. She adduced PW1's birth certificate in court indicating that she was born on 9th November 2005. She, together with PW1 identified him in court.

5. PW3, Judith Auma the investigating officer received the report and referred PW1 to Nairobi Women Hospital where she was examined. She further produced her birth certificate in court, as well as identifying the appellant as she testified.
6. PW4, John Njuguna, brought forth PW1's PRC form and P3 form. It was observed that she had no injuries on her body, but her hymen had multiple old tears.
7. At the close of the prosecution case, the trial court was satisfied that a prima facie case had been established. When placed on his defense, the appellant testified that he was not guilty of the offence, that he was merely arrested and ferried to Muthangari Police Station where he was placed in custody.
8. 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.”
9. Further, section 8(1) and (3) 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.
10. The element of penetration is undoubtedly proven. The testimony of PW1 reveals that she had on multiple occasions had sex with the appellant who condoms. This was corroborated by PW4, the clinician who stated that her hymen had multiple old tears.
11. On the age of the complainant, the trial court considered the copy of her birth certificate produced by both her mother and the investigating officer. The birth certificate indicated that the complainant was born on 9th November 2005. She was therefore fourteen (14) years at the time of the offence. There is therefore no doubt that PW2 was a child.
12. On identification of the appellant, the complainant stated that she frequently visited him at his home after school following his woos. Additionally, the complainant's mother identified him in court. Therefore, the element of identification is met.
13. The upshot of the above analysis is that the prosecution proved their case beyond reasonable doubt. The conviction is hereby affirmed.
14. On sentence, the appellant was sentenced to serve twenty years imprisonment. During sentencing, the court considered the pre-sentence report and exercised discretion. In the premises, I see no reason to interfere with the sentence.



15. 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 3RD DAY OF JUNE 2025.

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

