



**Kiplagat alias Chai v Republic (Criminal Appeal E012 of 2025)  
[2025] KEHC 8471 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8471 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E012 OF 2025  
DR KAVEDZA, J  
JUNE 17, 2025**

**BETWEEN**

**DANIEL KIPLAGAT ALIAS CHAI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 23rd January 2025 at Kibera Chief Magistrate's Court, Sexual offence case No. E114 of 2024 Republic v Daniel Kiplagat Matui before Hon. Kabuya I.M (SPM))*

**JUDGMENT**

1. The Appellant was charged and, after a 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 Act). The particulars were that on diverse dates between January 2024 and June 2024 within Nairobi County, the appellant intentionally caused his Penis to penetrate the Vagina of S.N.W., a child aged fifteen (15) years. He was also convicted on the alternative count of committing an indecent act with a child contrary to section 11(1) of the Act. The appellant was sentenced to serve 20 years imprisonment.
2. 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 that 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 and the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
3. PW1, Complainant's gave evidence after voir dire examination. PW1 testified that she met the appellant, a pastor, at church in December 2023. Initially, she began by babysitting his child and they developed a friendship that became romantic by early 2024. In April 2024, when she was sent home from school for unpaid fees, she visited the appellant's house, where he comforted her, leading to



- them engaging in sexual intercourse. PW1 admitted to willingly visiting his home and confirmed their relationship to her teacher, P when questioned. During cross-examination, she denied that she had claimed to be an adult or refused to show his identification when the appellant asked for it.
4. PW2, PW1's mother, confirmed the appellant was a church congregant. She described PW1 as truant, and frequently absent from home and school. Community policing traced PW1, who confessed to her teacher about her relationship with the appellant. PW2 was unaware of any sexual relationship and called PW1 untruthful, noting her frequent illnesses as a reason for school absences.
  5. Daisy Kerubo PW3, a clinician, testified that PW1's medical summary indicated a prior sexual encounter in childhood and a recent sexual encounter with the appellant on 16 July 2024. Examination two months later showed no genital bruises or lacerations. Remnants of hymen were observed.
  6. On 4 August 2024, PW2 reported PW1's truancy to PW4, a community policing member. PW4 escorted PW1 and her mother to school, where PW1's teacher confirmed her absences. PW1 admitted visiting the appellant's house, leading to his arrest after he confirmed their friendship and her sexual activity.
  7. PW5, PC Kagera's Evidence: On 18 September 2024, PW4, PW1, and the appellant arrived at Kibra Police Station. PW1 disclosed a year-long sexual relationship with the appellant. PW5 recorded statements, obtained PW1's birth certificate, and verified her school absenteeism. The appellant denied the allegations.
  8. PW6, AO, and PW7, PA, confirmed PW1's frequent school absences, citing hunger and stomach aches as her excuses. PW1 admitted visiting the appellant's house. PW7 heard the appellant admit at the police station to defiling PW1 twice, though her statement was not recorded.
  9. In his defence, the appellant testified that on 18 September 2024, PW1 and others confronted him. He denied sexual relations, alleging the accusations arose from church politics involving PW1's father, a leadership rival, who later apologised.
  10. The appeal was canvassed by way of written submissions which have been duly considered which have been duly considered and there is no need to rehash.
  11. To succeed in a prosecution for defilement, it must be proven that the appellant 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."
  12. 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.
      - (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.
  13. The offence of defilement under Section 8(3) of the *Sexual Offences Act*, No. 3 of 2006 applies to a child aged between 12 and 15 years. It requires proof of three ingredients: the complainant's age within this bracket, penetration, and the perpetrator's identity.



14. PW5, PC Kagera, produced PW1's birth certificate which confirmed that PW1 was born on 12<sup>th</sup> November 2008. The incident took place between January 2024 and June 2024. The complainant was therefore 15 years old at the time satisfying the ingredient of age.
15. On penetration, PW1 testified that in April 2024, she engaged in sexual intercourse with the appellant at his residence. PW3, a clinician, reported a medical examination after 16 July 2024, noting hymen remnants but no recent bruises or lacerations, consistent with prior sexual activity. This corroborates PW1's account, establishing penetration beyond a reasonable doubt.
16. The appellant's identity is unequivocally established. PW1 identified him as a pastor and church congregant who met in December 2023, corroborated by PW2 (her mother), PW4 (community policing member), PW6, and PW7 (teachers). The appellant's admission of PW1's visits to his residence, though denying sexual activity, further confirms his identity as the perpetrator.
17. From the foregoing, the prosecution proved beyond reasonable doubt the elements of defilement against PW1 under Section 8(3) of the [Sexual Offences Act](#), No. 3 of 2006. The conviction is therefore affirmed.
18. On sentence, the appellant was sentenced to 20 years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.
19. However, from the record, the trial court failed to consider the four months spent in remand custody during the computation of the appellant's sentence. In the premises, the Appellant's sentence of twenty (20) years imprisonment shall run from September 18, 2024 pursuant to section 333(2) of the [Criminal Procedure Code](#), Cap 75 Laws of Kenya.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JUNE 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

