



**Okonda v Republic (Criminal Appeal 50 of 2024)
[2025] KEHC 7954 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 50 OF 2024
DR KAVEDZA, J
JUNE 9, 2025**

BETWEEN

BOSS MISIKO OKONDA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 15th July 2024 by Hon. M. Murage (PM) at Kibera Chief Magistrate's Court Sexual Offences Case no. 070 of 2023 Republic vs Boss Misiko Okonda)

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(4) of the *Sexual Offences Act* No 3 of 2006. The particulars were that on the night of the 10th day of June 2023 at [Particulars Withheld] of Kangemi location of Dagoretti Sub-County within Nairobi county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of T.G.I a child aged 16 years and 9 months. He was sentenced to serve fifteen (15) years' imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. He contended that his trial was unfair and that his defense was not considered by the trial magistrate.
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. PW2, TGI the complainant testified that on the material day, she went to the appellant's house, claiming that he was her boyfriend. She implored him to take off his clothes and proceeded to have sex with him. The following day, PW2, CI who was her mother, PW4



FK her aunt, and PW5 BS who was her brother found her at the appellant's house. The three gave corroborating evidence, stating that they accompanied both the complainant and appellant to Dallas Police Station where the investigating officer, PW6 PC Benson Njeri arrested the appellant. He further recorded the statements of PW2, PW3, PW4 and PW5.

5. The complainant was referred to Nairobi Women's Hospital where she underwent a medical examination. PW1, John Njuguna testified based on her PRC form and P3 form that she did not have any physical injury, aside from the presence of a healed torn hymen.
6. At the close of the prosecution case, the trial court was satisfied that a prima facie case had been established. Thus, the appellant was placed on his defense. He testified only of his arrest, claiming that he was charged with the offense based on a grudge had with the complainant's mother, which was corroborated by DW3 Cecilia Ateya his mother. DW2, Hope Nafula the appellant's wife narrated that on the day of his arrest, she heard a mob outside their house claiming that they intended to kill the appellant as he had allegedly defiled the complainant whom she did not know.
7. 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."
8. Further, sections 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.
 - (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
9. The element of penetration is unequivocally established. The complainant testified that she engaged in sexual intercourse with the appellant at his residence. Her account was corroborated by PW1, a clinician, who presented medical records confirming that the complainant's hymen was torn but healed, consistent with her testimony.
10. Regarding the complainant's age, the trial court examined her birth certificate, tendered by both her mother and the investigating officer. The certificate confirms that the complainant was born on 17th September 2006, making her 16 years and 9 months old at the time of the offence. Accordingly, it is indisputable that PW2 was a minor under the law.
11. On the issue of the appellant's identification, the complainant confirmed she knew the appellant as her boyfriend. Furthermore, her mother, aunt, and brother identified the appellant in court, having previously cautioned him against associating with her. Thus, the element of identification is satisfied.
12. In conclusion, the prosecution has discharged its burden of proof beyond a reasonable doubt. The evidence adduced establishes all requisite elements of the offence. Consequently, the conviction is upheld.
13. The appellant was sentenced to fifteen (15) years' imprisonment. The trial court took into account the pre-sentence report and exercised its discretion in determining the appropriate sentence. There is no justification to interfere with the sentence, which is hereby affirmed.



14. However, from the record, the trial court failed to consider the time the appellant spent in remand custody during sentencing. In the premises, the sentence of fifteen (15) years imprisonment shall run from 11th June 2023, the date of his arrest pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant absent

Mutuma for the Respondent

Tonny Court Assistant

