



REPUBLIC OF KENYA



**KENYA LAW**  
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**Manika v Republic (Criminal Appeal E056 of 2025)  
[2025] KEHC 10077 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E056 OF 2025**

**DR KAVEDZA, J**

**JULY 15, 2025**

**BETWEEN**

**LEVI ITOLE MANIKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. C. Njagi (PM) on 24th February 2022 at Kibera Chief Magistrate's  
Court Sexual offence case No. E051 of 2021 Republic vs Levi Itole Manika)*

**JUDGMENT**

1. The Appellant was charged and after full trial convicted by the Subordinate Court of the offense of defilement contrary to section 8(1) as read with 8(4) of the *Sexual Offenses Act* No.3 of 2006. The particulars were that on the diverse dates between January 2022 and May 2022, at Kawangware, in Riruta Dagoretti Sub County within Nairobi County, jointly with others not before court unlawfully and intentionally caused his penis to penetrate the vagina of a child aged 17 years. He was sentenced to serve (15) years' imprisonment.
2. Aggrieved, he filed an appeal, challenging his conviction and sentence. In his appeal, he challenged 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 upon him.
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 conclusion on that the evidence without overlooking the conclusions of the trial court but bearing in mind it never saw the witnesses testify.
4. The prosecution's case was as follows: The complainant, PW2, testified that she was 17 years and 6 months old at the material time. She stated that in January 2022, the appellant, Levi, a tenant at her



- father's premises, initiated unwanted advances towards her. PW2, then a Form Three student, was visibly in her school uniform, and the appellant was aware of her age and status. Despite her objections, the appellant persisted in his pursuit.
5. On one occasion, while PW2 was cooking, the appellant entered her residence, forcibly took her to the sitting room, and, disregarding her resistance, removed her clothing and penetrated her vagina with his penis. He threatened to stab her with a knife if she disclosed the incident.
  6. In a separate incident, the appellant, accompanied by two men, forcibly engaged in sexual intercourse with her, despite her resistance. PW2 testified that they covered her mouth, preventing her from calling for help or effectively resisting.
  7. As a result of these sexual assaults, PW2 became pregnant and was compelled to stop going to school. She reported the incidents to her father, who informed the area chief, leading to the appellant's arrest. She told the court that she did not know the identities of the other two men.
  8. During cross-examination, PW2 testified that the appellant's wife, upon discovering their messages, threatened her and compelled her to surrender her phone. The wife deleted PW2's accounts after confirming the appellant had initiated contact. PW2 further stated that the appellant visited her at night, armed with a knife, gagged her, and photographed them. She maintained that she used these photographs to blackmail her.
  9. PW1, John Njuguna, a clinician at Nairobi Women's Hospital, produced medical records for the minor, attended by Beldina Nyashanso. He testified that on 11th May 2022, the minor reported being impregnated by three men. Examination revealed a calm demeanour, no recent genital injuries, a broken hymen, and an 18-week pregnancy with no abnormalities or sexually transmitted infections. The PRC Form, completed on 11th May 2022, and the P3 Form, completed on 12th May 2022, recorded alleged defilement. PW1 stated the minor reported, "walilala na mimi watu watatu," with conception estimated between January and February 2022.
  10. PW3, BI, the complainant's father, testified that between February and March 2022, the complainant refused to return to school. She was questioned by the area chief, and the appellant, a tenant, was summoned. PW3 accompanied the complainant to Nairobi Women's Hospital, where her pregnancy was confirmed. During cross-examination, he confirmed that the appellant lived with his cousin who was the one paying rent.
  11. In his defence, the appellant testified that he was in Kitale during the relevant period. He stated that he returned home on 15th March 2022, stayed for one week, and then went back. He later visited his cousin Pamela and her wife, who informed him that they had received a notice to vacate the premises and could not fetch water due to rent arrears. He approached the area chief to request an extension of time when he encountered other people. It was alleged that he knew about the girl in school uniform, which he denied. He was subsequently taken to Riruta Police Station and later arrested on allegations of defilement. He claimed he was submitted to a DNA test, but no report was produced and no proper investigation was carried out.
  12. During cross-examination, he maintained that he only possessed a basic phone incapable of accessing social media. He insisted that he did not know the complainant, suggesting she may have seen him at his cousin's residence. He concluded by stating that he had never spoken to the complainant nor obtained her contact information.
  13. DW2 the appellant's wife corroborated the appellant's testimony, stating that her husband would often travel outside Nairobi for work. She confirmed they had received a notice to vacate the house and denied ever threatening the complainant. She testified that her husband returned to Nairobi on 7th May 2022.



She further stated that when they went to the chief's office, they met a girl in a school uniform for the first time.

14. DW3 Pamela Simiyu the appellant's cousin corroborated the testimonies of both DW1 and DW2.
15. The appellant was subsequently convicted and sentenced accordingly.
16. 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.
17. 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."
18. Further, section 8(1) and (4) of the [Sexual Offences Act](#), No. 3 of 2006 provides thus: -

#### 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 fifteen to seventeen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
19. Regarding the age, PW2 stated that she was seventeen at the time of the offence this was corroborated by the father, PW4 who produced the birth certificate of the minor (17) years old at the time the offence was committed. The ingredient of age was therefore adequately satisfied.
  20. On the element of penetration, PW2 testified that the appellant, Levi, forcibly engaged in sexual intercourse with her. This was corroborated by PW1, a clinician at Nairobi Women's Hospital, who confirmed hymen tears and established that PW2 conceived a child as a direct result of the sexual assault. The medical evidence unequivocally supports the occurrence of penetration.
  21. On the issue of identification, PW2 gave clear and unwavering evidence that she knew the appellant personally, as he was both a neighbour and a tenant residing at her father's premises. She testified that in January 2022, the appellant began making unwanted advances towards her and thereafter would visit their home on multiple occasions. She stated that during these visits when her father and brother were absent, the appellant engaged her in acts of sexual intercourse without her consent. The mode of identification was by recognition, a method the courts have held to be reliable, particularly where the witness is familiar with the perpetrator.
  22. PW2's testimony was consistent, detailed, and credible throughout her examination and cross-examination, leaving no doubt as to the identity of the perpetrator. Her account was further strengthened by the surrounding circumstances and her ability to place the appellant at the scene.
  23. The appellant's defence that he did not know the complainant and had no contact with her does not withstand scrutiny. His denial did not dislodge the weight of the prosecution's case, which rests on PW2's direct evidence of recognition and the medical findings that corroborate the occurrence of defilement. Cumulatively, the prosecution's evidence remains firm and compelling, and the appellant's version fails to raise any reasonable doubt as to his involvement.
  24. The submission by the appellant that DNA evidence could have potentially exonerated him is without merit. I say so because, it was established that PW2 was defiled by multiple individuals, including the appellant. The child's paternity is immaterial, as the appellant's participation in the offence is



conclusively proven. PW2, at 17 years and 6 months, was of sufficient age to comprehend and recount the events accurately.

25. Accordingly, the prosecution has proven beyond reasonable doubt the elements of defilement under Section 8(4) of the *Sexual Offences Act*, No. 3 of 2006, namely penetration and the identity of the appellant as a perpetrator. The conviction is hereby affirmed.
26. On sentence, the appellant was sentenced to serve fifteen (15) 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.
27. 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 15<sup>TH</sup> DAY OF JULY 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Mr. Simiyu for the Appellant

Mr. Mongare for the Respondent

Ms. Karimi Court Assistant

