



REPUBLIC OF KENYA



KENYA LAW
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**Ondoro v Republic (Criminal Appeal E057 of 2025)
[2025] KEHC 10155 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E057 OF 2025
DR KAVEDZA, J
JULY 15, 2025**

BETWEEN

OSCAR MAGANDA ONDORO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
1st April 2025 by Hon. M. Murage (PM) at Kibera Chief Magistrate's Court
Sexual Offences Case no. E040 of 2021 Republic vs Oscar Maganda Ondoro)*

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(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars are that on the 26th day of March 2021 at Kibera [Particulars Withheld] in Kibra sub-county within Nairobi County, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of TJA a child aged 8 years 3 months. He was sentenced to life 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 complained that the learned magistrate erred in law and fact by relying on the unsworn testimony of the complainant and, that the prosecution evidence was marred with contradictions and inconsistencies. 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 case was as follows; PW2, TJA the complainant gave unsworn testimony in which she averred that on the material day, she was residing at her aunt's place when she went looking for her friend A (minor, name withheld). She found him at the appellant's home. The appellant instructed him to step outside and thereafter proceeded to take her clothes off and insert his penis into her vagina, an action that prompted her to start crying. He then took off, and she went back to her house where she took off her blood-stained clothes and informed her mother of the ordeal. She identified the appellant in court.
5. As discussed in the [Kenya Judiciary Criminal Procedure Bench Book](#) 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
 - “ 94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
 95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, [Evidence Act](#)). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; *Julius Kiunga M'biritbia v R* High Court at Meru Criminal Appeal No. 111 of 2011).
 96. The evidence of a child, sworn or unsworn, received under section 19 of the [Oaths and Statutory Declarations Act](#) is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), [CoK](#)”
6. The complainant's evidence did not strictly require corroboration under the proviso to section 124 of the [Evidence Act](#) (Cap. 80, Laws of Kenya) if the court was satisfied that the child was truthful. In this case, the trial magistrate found the complainant consistent and unwavering, even under cross-examination.
7. Nevertheless, as the complainant was a minor of tender years and gave unsworn evidence, corroboration was therefore necessary. PW1, FA, the complainant's mother, testified that when she picked up her daughter from her sister's house, the child complained of pain in her private parts. She observed blood oozing from the complainant's vagina, staining her trousers.
8. The child's father took her to Ushirika Medical Centre. PW1 confirmed that her daughter's skirt and underpants were bloodstained. She carried these clothes to Ushirika Medical Centre, and the child was later referred to Nairobi Women's Hospital. She also produced the complainant's birth certificate showing she was born on 20th December 2012. PW3, Danson Ramzi Ghomo, accompanied them to the hospital and later to the police station where they recorded their statements.
9. PW4, John Njuguna, a clinician produced the complainant's PRC and P3 forms, indicating that she had normal external genitalia with redness on her labia and three lacerations on her hymen. His findings were that the tears were a result of blunt penetrative trauma. It was also observed that the complainant's underpants were stained with blood.



10. PW5, Joyce Kihoro, a government analyst, took a DNA sample from the appellant using a buccal swab and compared it with the bloodstains on the complainant's panty. The samples matched, and she produced her report in evidence. PW6, PC Mercy Mwikali, the investigating officer, stated that after the matter was reported at Kilimani Police Station, she visited the scene and arrested the appellant. She produced the complainant's birth certificate, her clothes (with an inventory form), and an exhibit memo.
11. In his defence, the appellant claimed that on the material day, he sat examinations until 1 pm, then fetched and sold water with DW3, Leonard Ochieng, until 7 pm. He said he informed his sister that dinner was ready and later spent the night at Morris' house. He testified that unknown men later knocked on the door, assaulted him, and took him to the police station. This account was supported by DW2, Odhiambo Amiywa, and DW3.
12. 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."
13. 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.
 - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
14. On the element of penetration, it was the evidence of the complainant that the appellant forcefully inserted his penis into her vagina after locking her in his house. PW4, the clinician, confirmed this by producing a PRC form showing three hymenal lacerations and redness on her labia, consistent with blunt force trauma. Her panty was bloodstained. PW5, the government analyst, matched DNA samples from both the appellant and the complainant. The scientific and testimonial evidence align convincingly.
15. On age, the trial court relied on the complainant's birth certificate, produced by the investigating officer. It showed she was born on 20th December 2012, making her 8 years and 3 months old at the time of the offence. She was therefore a child in law.
16. On identification, the complainant identified the appellant in court. This was further confirmed by the DNA evidence from the government analyst, clearly linking him to the offence. The element of identification is therefore established.
17. In light of the above, the prosecution proved its case beyond reasonable doubt. The conviction by the trial court was proper and is affirmed.
18. Upon conviction, the appellant was sentenced to life imprisonment. During sentencing, the court considered his mitigation and imposed the sentence provided under the law. In the premises, I see no reason to interfere.
19. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed in its entirety. Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JULY 2025



D. KAVEDZA

JUDGE

In the presence of:

Mr. Muga for the Appellant

Mr. Mongare for the Respondent

Ms. Karimi Court Assistant

