



**Okwaro v Republic (Criminal Appeal 139 of 2023 & 11 of 2024
(Consolidated)) [2024] KEHC 5615 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 139 OF 2023 & 11 OF 2024 (CONSOLIDATED)**

DR KAVEDZA, J

MAY 21, 2024

BETWEEN

SILAS OMORO OKWARO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. E. Boko (SPM) on 17th November 2022 at Kibera Chief Magistrate's
Court Sexual Offences No. E016 of 2022 Republic vs Silas Omoro Okwaro)*

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* (the Act). The particulars were that on diverse dates between June 2021 and October 2021 at Kibra Sub-County, he intentionally and unlawfully caused his Penis to penetrate the Vagina of R.M., a child aged 16 years old. He was sentenced to serve 16 years' imprisonment.
2. Being dissatisfied, he filed an appeal against the conviction and sentence in line with his petition of appeal. Both parties have filed written submissions, which I have considered.
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. With the above, I now proceed to determine the substance of the appeal.. The thrust of the grounds of appeal is that the prosecution failed to prove its case beyond reasonable doubt. That the trial court failed to consider the appellant's defence. Finally, the sentence imposed was harsh and excessive.



5. In response, the respondent filed grounds of opposition dated 19th March 2024. The grounds raised are that the appeal is an abuse of the court process since the appellant was properly tried and convicted. The prosecution discharged their burden of proof beyond reasonable doubt. The appeal lacks merit and should be dismissed.
6. 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."
7. The prosecution case was as follows. The Complainant (PW1) provided a sworn testimony stating that she was born on 28th May 2005. She identified the appellant as her mathematics teacher. She testified that sometime in June 2021, the appellant proposed to have a relationship with her and she accepted. Later on, the appellant tried to have sex with her but she refused. The appellant, however, forcefully had sex with her in the classroom while the other pupils were away.
8. She told the court that the appellant initiated tried to have sex with her in July, and September 2021, which she refused. During the two incidents, he forcefully had sex with her on both occasions once in the classroom and the other time at the bottom of the staircase. In October of the same year, the appellant lured her to his house where again had sex with her. During this ordeal, she was bleeding. She took a shower and did not inform her mother. Later on, she became sick, and her father took her to hospital, where she was told it was Phenoumia. In February 2022, she fell sick again and it was discovered that she was pregnant. The matter was reported to the police station where a P3 form was issued. She was taken to Nairobi Women's Hospital and a PRC Form was also issued. She told the court that she was scheduled to deliver in June 2022. The appellant was eventually arrested.
9. In her testimony, PW1 gave clear and graphic testimony of how the appellant had sexually assaulted her four times in 2021 and 2022. Despite being subjected to rigorous cross-examination, PW1 remained steadfast that it was the appellant, her mathematics teacher who committed these acts against her. The appellant was well known to PW1 as her and the incidents occurred in school and once in his home. She could not have possibly pointed fingers at the wrong person for acts that lasted for a very long time. I therefore hold that the Appellant is the one who committed the act of sexual assault.
10. PW1's testimony did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are recorded reasons why she believed the child was telling the truth. In his judgement, the trial magistrate recorded that his observation of the demeanour of the minor as she testified was satisfactory and that she was truthful and credible. I have also thoroughly gone through the testimony of PW1 and noted that she was consistent all through, and her evidence was unshaken on cross-examination by the appellant.
11. Regarding additional corroborating evidence, the prosecution called Jackson Muthian (PW2), who is PW1's father. He recounted that sometime in January 2022, PW1 was complaining of pain and bleeding in her private parts. He took her to hospital where she was confirmed to be pregnant. He was advised to report to the police as PW1 had informed him that the appellant was the father. He reported the incident at Jamhuri Police Station and the complainant was referred to Nairobi Women's Hospital for examination and treatment.
12. Jemima Mweu PW3, the headteacher of the school where the complainant was a pupil confirmed that the appellant was a teacher there. It was her evidence that PW1 informed her that she had slept at the appellant's house where he had defiled her.
13. Additionally, the prosecution called John Njuguna, a clinical officer at Nairobi Women's Hospital, PW4, who produced the GVRC form, Post rape care (PRC) form, and P3 form on behalf of his



colleague, Kelvin Oluoch, who no longer worked at the hospital. He stated that PW1 underwent an examination on 7th February 2022 after giving a history of being sexually assaulted by her teacher. Upon examination, there were no outward physical injuries noted. However, the pregnancy test came out positive the foetus being 14 weeks. The hymen was broken. The findings were consistent with blunt penetration in the vagina.

14. Considering that PW1 was examined long after her first sexual encounter with the appellant, and considering the repetitive nature of their sexual activity, these medical findings corroborate PW1's testimony regarding penetration.
15. On the age of PW1, a birth notification was produced in evidence by PW4. She was born on 28th May 2005 meaning that she was 16 years old on the diverse dates indicated in the charge sheet. There is therefore no doubt that PW1 was a child within the meaning of the law.
16. In his defence, the appellant gave unsworn evidence. He told the court that he joined the school's teaching staff through the Parents Teachers Association in 2012. However, issues arose in May 2021 when salaries were delayed. Despite attempts to resolve the matter with the head teacher, the delays persisted into June and beyond. By October, he escalated the issue to the director, which resulted in hostility from the head teacher towards him. In February 2022, he was unexpectedly summoned by the head teacher and taken to the police station for interrogation, where he faced aggressive questioning from female officers. Subsequently, the father of a victim demanded cattle as a form of settlement, to which he agreed out of confusion. This ultimately led to his appearance in court, despite not fully comprehending the situation. He maintained his innocence.
17. The trial court considered this defence and found it to be mere denial and a sham. I make a similar finding that the prosecution proved their case against the appellant beyond reasonable doubt. The conviction on the charge of defilement is therefore affirmed.
18. On the sentence, section 8(4) provides that 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. The prosecution proved that the child was 16 years old; hence, the trial court, upon exercising discretion, imposed the sentence of 16 years' imprisonment after considering the 10 months spent in remand custody.
19. The primary purpose of a sentence in a criminal case is to punish an offender for their wrongdoing, while also aiming to rehabilitate them and discourage future criminal behaviour, turning them into law-abiding citizens. Although the trial court's sentence in this case was lawful, being a first-time offender still has a chance for rehabilitation and a full life ahead. I therefore find that the sentence of sixteen (16) years was manifestly harsh and excessive.
20. For the above reasons, I hereby set aside the sentence of sixteen (16) years imposed and substitute it with a sentence of ten (10) years imprisonment. The sentence shall run from the date of arrest, 7th February 2022 pursuant to section 333(2) of the [Criminal Procedure Code](#).

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF MAY 2024

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D. KAVEDZA

JUDGE

In the presence of:



Appellant present

Mr. Mong'are for the Respondent

Nelso Court Assistant

