



**Okumu alias Chiambe v Republic (Criminal Appeal E082 of 2024)
[2025] KEHC 13942 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13942 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E082 OF 2024
JM OMIDO, J
SEPTEMBER 19, 2025**

BETWEEN

PETER CHIAMBE OKUMU ALIAS CHIAMBE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the judgement and conviction of Hon. C.K. Yalwala, SPM delivered on 15th August, 2024 and the sentence of Hon. M. Ochieng', SPM imposed on 10th September, 2024 in Maseno Sexual Offence Case No. 18 of 2020, Republic v Peter Chiambe Okumu alias Chiambe)

JUDGMENT

1. The names of some of the witnesses in this appeal have been withheld and, in their stead, I have used initials in order to protect the identities of the witnesses.
2. This appeal emanates from the judgement and conviction of Hon. C.K. Yalwala, SPM delivered on 15th August, 2024 and the sentence of Hon. M. Ochieng', SPM imposed on 10th September, 2024 in Maseno Sexual Offence Case No. 18 of 2020, Republic v Peter Chiambe Okumu alias Chiambe.
3. The Appellant Peter Chiambe Okumu alias Chiambe was charged in the principal count with the offence of defilement contrary to Section 8(1) and (2) of the [Sexual Offences Act](#), Cap 63A Laws of Kenya (erstwhile Act No. 3 of 2006).
4. As is instructive from the charge sheet, the particulars of the offence were that on 18th and 19th of April, 2020 at about 2200hrs at South Central Seme Location, within Kisumu County, the Appellant intentionally caused his penis to penetrate the vagina of MAO (hereinafter "the survivor"), a child aged 15 years.
5. Notably, the proper provision under which the Appellant ought to have been charged under was Section 8(1) as read with 8(3) of the [Sexual Offences Act](#) and not 8(1) as read with 8(2) of the statute, as



stated in the charge sheet. That is because 8(2) is in respect survivors aged eleven years or less while 8(3) is in respect of survivors aged between twelve and fifteen years. The defect is however one that I will treat as curable under Section 382 of the Criminal Procedure Code as no prejudice was visited upon the Appellant by the defect.

6. The Appellant was in the alternative count with the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* Cap 63A Laws of Kenya.
7. The particulars of the offence in the alternative charge were that on 18th and 19th of April, 2020 at about 2200hrs at South Central Seme Location, within Kisumu County, the Appellant intentionally touched the vagina of the survivor, a child aged 15 years, with his penis.
8. The Appellant pleaded not guilty and a full trial was conducted. The prosecution case was founded on the evidence of 4 witnesses. The defence evidence comprised the unsworn testimony of the Appellant.
9. There are a total of 8 cited grounds of appeal presented by the Appellant vide the Petition of Appeal dated 19th September, 2024, upon which the Appellant seeks to upset the conviction and sentence. The grounds of appeal may be summarized as follows:
 - a. The learned trial Magistrate erred in law by reaching a finding that the prosecution proved its case beyond reasonable doubt.
 - b. The learned trial Magistrate erred by convicting the Appellant in a trial where the evidence of the investigating officer was not tendered.
 - c. The sentence of the trial court was manifestly harsh.
10. This court directed that the appeal be canvassed by way of written submissions. Both the Appellant and the Respondent filed their respective submissions.
11. This being a first appeal, this court has a legal duty to re-analyze, re-evaluate and re-assess the evidence adduced in the lower court so as to come up with its own conclusions bearing in mind that it did not have the benefit of seeing the witnesses testify (See *Okeno vs Republic* [1972] E.A, 32 at page 36, *Pandya vs Republic* [1957] EA 336, *Shantilal M. Ruwala vs Republic* [1957] EA 570 and *Peter vs Sunday Post* [1958] EA 424.
12. The first prosecution witness was the survivor MAO (PW1), who told the trial court that she was born on 15th September, 2005 and was at the time of testifying (22nd June, 2020) 15 years of age. The survivor identified a copy of her certificate of birth.
13. The survivor narrated the events of 18th April, 2020 and told the trial court that on that day she left her grandmother's home and had the intention of visiting her schoolmate at the latter's home. She then met one Erick, a motor cycle rider, who took her to the Appellant. The Appellant then took the survivor to his home at about 1000hrs and left her in the house, and returned at about 1700hrs. That evening, the survivor's cousin, one M, visited the Appellant's house and was surprised to find the survivor there. That M then left with the Appellant, with the former telling the survivor that he would return for her the next day.
14. It was the survivor's further evidence that she fell asleep and woke up at about 2100hrs when the Appellant returned to the house in the company of his friend, one Dismas. The Appellant then slept with the survivor in the same bed while Dismas slept separately on a mattress. The survivor told the trial court that that night, the Appellant undressed her and proceeded to have sexual intercourse with her. At dawn, M returned to the Appellant's house and took her to her grandmother.



15. The survivor stated that at about 0900am, police officers went and took her' M and the Appellant away. She was taken to Kombewa Hospital where she was examined and treated. Her P3 form was completed at the facility. The survivor identified treatment notes from the hospital and the P3 form.
16. On being cross examined by the Appellant, the survivor told the trial court that she left for her grandmother's house after leaving the Appellant's house.
17. The second prosecution witness was DAA (PW2), the survivor's grandmother. The witness told the trial court that the survivor was at the time of the alleged offence 15 years old, having been born on 15th September, 2005, and a form 2 student at XY Secondary School.
18. PW2 told the trial court that on 18th April, 2020, she left the survivor at her home but did not find her when she returned. Her efforts to find her that day were not fruitful. The next morning, she reported to the area Assistant Chief Jacob Odongo and to Bodi Police Post that the survivor had gone missing. She later was informed by her sister-in-law that the survivor had been sighted and promptly informed the Assistant Chief, who, in the company of his team, proceeded to the place where the survivor had been seen, and shortly returned with the survivor and the Appellant. The two were taken to Kombewa Police Station,
19. On being cross examined by the Appellant, PW2 told the trial court that it was the Assistant Chief and his team who apprehended the Appellant and took him to the police station.
20. PW3 was Police Constable Leonard Ngeno of Kombewa Police Station. In his testimony before the trial court, the witness stated that the role he took in the matter was that of an investigator. He stated that a report was made to the station that the Appellant had defiled the survivor on 18th April, 2020 by having unprotected sexual intercourse with her in the Appellant's house, where the survivor, who was 15 years old, spent that night.
21. The officer told the trial court that he took both the survivor and the Appellant to Kombewa Hospital, where they were both examined. The survivor's P3 form was completed at the facility.
22. PW3 produced the following documents as exhibits: A copy of the survivor's certificate of birth.
23. On being cross examined by the Appellant, PW3 told the trial court that the Appellant was arrested by police officers from Bodi Police Post.
24. The last prosecution witness was Edwin Ochieng' Oduor, (PW4) a clinical officer based at Kombewa Hospital. The witness testified and told the trial court that on 20th April, 2020, he examined and treated the survivor, who was 15 years old and who presented a history of having been defiled by her boyfriend from 18th April, 2020 to 19th April, 2020.
25. PW4 told the trial court that on examining the survivor, he noted that there were no bruises and no discharge from her vagina. He however noted that the survivor's hymen was not intact. Pregnancy HIV and STI tests all returned negative results. On conducting urinalysis tests, the witness noted that the survivor had epithelial cells, which meant that she had minor bruises in her vagina, which was an indicator that her vagina had been penetrated and pus cells, which was an indicator of an infection. The approximate age of injuries was 2 days.
26. The witness further told the trial court that he examined the Appellant, who was 20 years old and noted that his penis had no bruises. Urinalysis test exhibited pus cells, which was an indicator of an infection. Both the Appellant and the survivor were put on treatment.



27. The witness produced the following exhibits: The survivor's treatments notes from Kombewa Hospital. The survivor's P3 form. The Appellant's treatment notes from Kombewa Hospital. The survivor's P3 form.
28. The witness, on cross examination, stated that the incident had occurred overnight.
29. The prosecution closed its case at that stage and in its ruling rendered on 28th September, 2023, the trial court reached a finding that the prosecution had made out a prima facie case against the Appellant and he was placed on his defence.
30. In his very brief unsworn testimony, the Appellant told the trial court as follows:

“My name is Peter Chiambe Okumu. I come from Seme. I am a farmer. I recall the charges which were read to me herein. Having heard the prosecution witnesses, I wish to state as follows: What the prosecution stated was not true. That is all. I have no witness to call.”
31. The defence case was closed at that stage.
32. Upon considering the evidence of the four prosecution witnesses and the Appellant's defence, the learned trial Magistrate found that the prosecution had satisfied all the ingredients of the offence of defilement contrary to Section 8(1) & (2) of the [Sexual Offences Act](#) and thus had proved its case beyond reasonable doubt and convicted the Appellant.
33. The Appellant was subsequently sentenced to serve twenty years imprisonment. He preferred the instant appeal, being aggrieved by the conviction and sentence.
34. In his submissions, the Appellant challenged the conviction on the basis that M, Dismas, the arresting officer and other mentioned witnesses were not called as prosecution witnesses. The prosecution responded by stating that Section 143 of the [Evidence Act](#) does not require any particular number of witnesses to prove a fact.
35. I have considered the grounds of appeal, the filed submissions, the evidence adduced before the trial court and the lower court's record in its entirety. One of the grounds that the Appellant proffered was that the learned trial Magistrate erred by convicting the Appellant in a trial where the evidence of the investigating officer was not tendered. That ground fails as it is clear from the trial court's record that the investigating officer testified as PW3.
36. I will deduce the issues that I am now tasked to determine which culminate in the question whether the prosecution proved the offence of sexual assault beyond reasonable doubt, as follows:
 - a. Whether the trial Magistrate erred in law in finding that the offence of defilement was proved beyond reasonable doubt.
 - b. Whether the sentence imposed was manifestly excessive.
37. Inevitably, this court in determining the appeal herein, must satisfy itself that the ingredients of the offence of sexual assault were proved against the Appellant beyond reasonable doubt, as is the requirement in law.
38. The offence of that the Appellant was charged with is provided for under Section 8(1) & (2) of the [Sexual Offences Act](#), Cap 63A Laws of Kenya as follows:

Section 8(1) and (3) of the [Sexual Offences Act](#), 2006 of Kenya provides as follows:



- 8(1). A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.”
- (2)
- (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.
39. From the provisions above, the offence of defilement is committed when the following ingredients are established:
- a. Age of the complainant (the victim is a “child” as per the *Children Act* definition—i.e. under 18 years).
 - b. Proof of penetration: an act that causes penetration (partial or full) with the child. The law’s definition of penetration includes insertion of genital organ by the assailant, into the genital organ of the complainant.
 - c. Positive identification of the assailant: the accused must be identified as the person who committed the act.
40. With respect of the age of the survivor, the prosecution proved that she was a child by producing her certificate of birth, which shows that she was born on 15th September, 2005. That then means that she was 14 years and 7 months old at the time of the incident, although the charge sheet set her age at 15.
41. Regarding the second and third ingredients which are whether penetration was proved and whether the Appellant was properly identified as the assailant, the main evidence that links the Appellant to the commission of the offence is that of the survivor and the clinical officer.
42. The testimony of the survivor was that she spent the night of 18th to 19th of April, 2025 at the Appellant’s home and that the Appellant undressed her and proceeded to have sexual intercourse with her. She told the court that the Appellant was a person who was well known to her.
43. The survivor’s grandmother (PW3) testified and stated that the survivor went missing on 18th September, 2020 and spent the night away and was traced the next day.
44. PW4, the clinical officer told the trial court that the survivor was taken to hospital on 20th April, 2020 and upon being examined, was found to have epithelial cells, which meant that she had minor bruises in her vagina, which was an indicator that her vagina had been penetrated.
45. The evidence of the survivor, her grandmother and the clinical officer was not challenged by the Appellant, either in cross examination or through his defence. As a matter of fact, his defence, which I have reproduced above and considered, was all but a mere denial, that what the prosecution witnesses stated was not true.
46. The findings of the clinical officer without a doubt corroborated the survivor’s narration that she had been violated. As the survivor knew the Appellant well, and considering her unshaken, corroborated evidence that she was violated by the Appellant, I reach the findings, just like did the trial court, that the Appellant had sexual intercourse with and penetrated the survivor’s vagina with his penis.
47. The Appellant complained that a number of mentioned witnesses was not called by the prosecution and that the conviction was not safe as a result.
48. In the case of Benjamin Mbugua Gitau v Republic [2011] eKLR, the Court of Appeal held that there is no set number of witnesses required to prove a particular fact. In *Bukenya & others v Uganda* [1972]



EA 549, it was held that the prosecution is under no obligation to call all possible witnesses, provided the evidence presented is sufficient to prove the case. The same general holding was reached in the authorities of *Keter v Republic* [2007] EA 135 and *Osoro v Republic* [2024] eKLR.

49. Moreover, it should be remembered that the survivor in this case was a child. In *Patrick Kathurima v Republic* [2015] eKLR, the Court of Appeal noted that the sworn evidence of a credible child witness can be believed and can form the basis of a conviction. The evidence of the survivor, as I have stated above, was corroborated by both her grandmother and the clinical officer and therefore served to prove that the Appellant violated her sexually. The prosecution thus proved the charge against the Appellant beyond reasonable doubt.
50. In respect of the appeal on sentence, we have seen above that under Section 8(3) of the *Sexual Offences Act*, the minimum sentence is 20 years imprisonment. It is apparent that the minimum sentence was imposed on the Appellant for the offence and his argument that the sentence was excessive or harsh is inept.
51. In the result, for the reasons stated above, I am of the persuasion that there has not been shown any basis upon which the learned trial Magistrate can be faulted on her findings on both conviction and sentence.
52. The upshot then is that I proceed to find that the appeal on both conviction and sentence is without merit and I proceed to dismiss the same and uphold the trial court's findings on the two fronts.

DELIVERED (VIRTUALLY) DATED AND SIGNED THIS 19TH DAY OF SEPTEMBER, 2025.

JOE M. OMIDO

JUDGE

Appellant: Present, virtually.

For Respondent: Ms. Jebichii.

Court Assistant: Mr. Ngoge.

