



**Makhoha v Republic (Criminal Appeal E049 of 2025)
[2025] KEHC 14368 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E049 OF 2025
DR KAVEDZA, J
OCTOBER 15, 2025**

BETWEEN

PETER ODUOR MAKHOHA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 13th March 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E128 of 2024 Republic vs Peter Odour Makhoha)

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 were that on 19th and 20th September 2024 at in Kibra Sub-County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of L.M a child aged 9 years. He was sentenced to serve thirty years (30) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant 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.
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 complainant gave a sworn evidence after voir dire examination. She identified the appellant as their neighbour and that he did to her 'tabia mbaya'. The appellant called to his house and stripped her party



- and trouser then defiled her. He further threatened her of the dire consequences if she told anyone what had transpired. After the incident, she then told Tr. George and the doctor what had happened.
5. PW3, George Bahati, PW2's teacher testified that the complainant informed her that the appellant invited her to his house for a sweet. There, he undressed her and proceeded to defile her. This incident happened for two consecutive days.
 6. PW4, Roselyn Alibeta, the complainant's mother told the court that she was summoned to the Children's Office, where she learnt that her daughter had been defiled. The complainant maintained that the perpetrator was the appellant. She contracted UTI, which was treated but recurred two days later.
 7. PW1, Edith Kerubo, a registered nurse at Coptic Hospital, produced the medical documents of L.M. She stated that the minor was brought in by her mother and two teachers with a history of defilement. Upon examination, her hymen was recently torn and healing, thus consistent with a week-old injury.
 8. The class teacher eavesdropped as the minor told her friends that she played the game 'dad-mum' with her neighbour. She called the minor aside and explained that an adult called her to his house and stripped her clothes before lowering his trousers and proceeded to have sexual intercourse with her on consecutive dates 19th and 20th September.
 9. PW5, PC Kagera corroborated the testimonies of PW2, PW3 and PW4. That PW2 had been defiled by the appellant on two consecutive days and was later directed to Coptic Hospital for treatment. Upon cross-examination, PW5 stated that he interrogated the appellant, but he denied committing the offence. He maintained that he was at work. PW6, a child protection volunteer at Kibera, corroborated the evidence of PW2, the complainant.
 10. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
 11. 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."
 12. Further, section 8(1) and (2) 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.
 13. The complainant, PW5, evidence as supported by PW2's baptism card that she was born on 12th February 2015. She was therefore nine (9) years old at the time the alleged offence was committed. The age ingredient has been unequivocally established.
 14. The second element of penetration is defined under section 2 of the *Sexual Offences Act*, to include, partial or complete insertion of genital organs. In this case, PW2, the victim, gave a detailed account of what had transpired. The appellant who was their neighbour, lured her into his house, which he then proceeded to lower PW2's trousers and inner wear. He then inserted his penis into her vagina. PW1's evidence who produced the medical reports form, which showed her hymen was recently torn



and healing thus consistent with penile penetration. The element of penetration was therefore proved beyond reasonable doubt.

15. On the issue of identification, the complainant was firm that it was the appellant, their neighbour, who sexually assaulted her. She gave a detailed and consistent account of the incident, remaining unshaken during cross-examination. PW4, the complainant's mother, confirmed knowing the appellant as their neighbour and positively identified him as the perpetrator.
16. In his defence, the appellant admitted being a neighbour but denied being present on the material dates. He alleged that PW4 fabricated the complaint following a strained relationship. However, he failed to provide any alibi or corroborative evidence to support his claim. The trial court found the defence unsubstantiated and an afterthought. The trial court also observed the complainant's demeanour and found her testimony truthful and credible.
17. Upon review, this court finds the appellant's defence inconsistent and implausible when weighed against the complainant's detailed evidence, corroborated by PW2's initial report, PW3's medical findings, and PW4's testimony, all supported by medical proof of penetration.
18. Accordingly, the prosecution proved all the elements of defilement beyond reasonable doubt. The appellant's defence does not raise any reasonable doubt, and the conviction under Section 8(2) of the *Sexual Offences Act* is hereby affirmed.
19. On sentence, the appellant was sentenced to 30 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.
20. 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 15TH DAY OF OCTOBER 2025

D. KAVEDZA

JUDGE

In the presence of:

In the absence of the Parties

Karimi Court Assistant.

