



**Republic v Okumu (Sexual Offence E015 of 2024)  
[2025] KEMC 107 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEMC 107 (KLR)

**REPUBLIC OF KENYA  
IN THE SIAYA LAW COURTS  
SEXUAL OFFENCE E015 OF 2024**

**JP MKALA, RM  
MAY 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEORGE ODUOR OKUMU ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with the offence of defilement contrary to Section 8 (1) (3) of the [Sexual Offences Act](#) No. 3 of 2006. The Particulars are that on the 22<sup>nd</sup> February, 2024 at Nyandiwa sub-location in Siaya sub-county within Siaya County intentionally caused his penis to penetrate the vagina of A. A. A. a child aged 13 years.
2. He is further facing an alternative charge of committing indecent act with a child contrary to section 11(1) of the [sexual offences Act](#) No. 3 of 2006. The Particulars are that on the 22<sup>nd</sup> February, 2024 at Nyandiwa sub-location in Siaya sub-county within Siaya County intentionally touched the vagina of A. A. A. a child aged 13 years with his penis.

**Prosecution’s case**

3. Prosecution case is that on the 22<sup>nd</sup> of February, 2024 the accused person intentionally and unlawful had carnal knowledge with the Victim A. A. A. a child of 13 years. They called 5 witness to bolster their case. The Clinical officer testified that there were some bruises on the labia minora of the victim. There was blood on high vaginal swab and features suggesting that A. A. A. was defiled.

**Defence case**

4. The accused testified as the only witness, he denied the charges levelled against him.



## Analysis and determination

5. The accused was charged with the offence of defilement contrary to section 8 (1)(3) of the *Sexual Offences Act* No. 3 of 2006.
6. Section 8 (1)(3) of the *Sexual Offences Act* provides as follows:-
  - 8.(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
  - (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.
7. For a charge of defilement to stand, the prosecution ought to prove three ingredients as provided under section 8 of the *Sexual offences Act*. They must prove that the victim was a minor, that the minor was penetrated and the penetration was by the accused person.
8. In the case of *Mercy Chelangat v Republic* [2022] eKLR Justice R Lagat Korir held as follows;
  14. It is trite that for the charge of defilement to stand, the Prosecution must prove three main ingredients as provided for under section 8(1) of the *sexual Offences Act* No. 3 of 2006 being the age of the victim (must be a minor), that there must be penetration and proper identification of the perpetrator (see *George Opondo Olunga vs. Republic* [2016] eKLR).
9. To determine whether the prosecution has proved their case beyond reasonable doubt, I shall move to discuss each ingredient as hereunder.

## Age of the victim

10. The importance of the age of the victim cannot be overemphasised. In the case of *Kenneth Mutegi Kilonzo v Republic* [2021] eKLR it was held that:
  22. Proof of a victim's age is a key ingredient to prove an offence of defilement given that the penalty is heavy depending on the complainant's age.
11. Rule 4 of the Sexual offences Rules 2014 provides

When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar documents.
12. The prosecution produced as exhibit 5, an age assessment report. From the said report the complainant was said to be 13 years at the time of the alleged offence. The defence did not object to the production of the report. It is my finding that the age has been adequately proven.
13. It is therefore my finding that the age of the victim was sufficiently proved.

## Penetration

14. Penetration is defined under Section 2 of the *Sexual Offences Act* as follows:

The partial or complete insertion of the genital organ of a person into the genital organs of another person.”
15. In *DS v Republic* [2022] eKLR Justice Lagat provided as follows:



19. Penetration is proved through the evidence of the victim corroborated by medical evidence. The testimony of the victim in this case coupled with a medical examination must be sufficient to determine whether penetration occurred. Where the medical examination may not be available or conclusive, the court ought to weigh with thorough scrutiny and utmost caution, the evidence of the child, in order to determine whether there was penetration.
16. The victim states that she slept in the kitchen and that she was not defiled by the accused person. The accused person has denied that he defiled the victim. The evidence by the clinical officer on the other hand suggest that the minor was defiled.
17. She testified that there was bruises on the victim's labia minora and palpable tenderness and that hymen was absent/torn but an old scar. It is clear that the victim was defiled.

### **Identification.**

18. This is one of the most important ingredients of the offence and if it fails, then the prosecution would have failed to prove their case beyond reasonable doubt. The question which this court needs to answer is whether it was the accused person who defiled the victim.
19. After conducting voir dire for the victim who was thirteen years then, this court determined that she was competent to testify and possesses knowledge and competence to give evidence albeit unsworn.
20. The victim states that her mother came back and found that she was beating her sibling. She ran away on fear that she would be beaten. She went to the accused person's home. She was asked by the accused person to go back but she refused, forcing the accused person to let her sleep in the kitchen while the accused person slept in the main house. She states that nothing happened and the accused person did not defile her.
21. This narration is further supported by PW1 who is the victim's mother. No single prosecution witness testified on seeing the accused person defiling the minor. PW4, PW3 state that they were told that the accused was defiling the minor, this information amounts to hearsay.
22. In *Morris Murimi v Republic* [2021] eKLR
  12. As discussed in the Kenya Judiciary Criminal Procedure Bench Book 2018 at 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'birithia 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”
23. PW1 and PW2 states that the victim was not defiled and in fact they do not know who reported the matter. Even though there are features suggesting that she might have been defiled, I believe the victim when she says that she was not defiled by the accused person on the material date.
24. At the end, I find that the prosecution has failed to identify the accused person as the individual who defiled the complainant.
25. What comes out of the Prosecution case and witness testimony is the presence of overzealous so-called human rights activist who are eager to be seen that they are doing something. This is a clear case of violation of the accused persons right. It has damaged the accused person’s reputation with frivolous and unfounded allegations.
26. This court wonders how after reviewing the evidence in this file the ODPP approved the charges and recommended the charging of the accused person. Let the ODPP take up its mandate and stop being a conveyor belt for unfounded and unsubstantiated allegations that do nothing but cause suffering to innocent people.
27. I note that the accused has been in and out the court corridors for slightly over one year for unfounded, ungrounded, unsubstantiated and baseless charges.
28. This court takes this opportunity to apologise to the accused person for not terminating this suit at the earliest opportune time. It is my hope that you find part within your heart to forgive us and those who decided to put you through this untold suffering.
29. The prosecution has the burden of proving their case beyond reasonable doubt. In *Moses Nato Raphael vs. Republic* [2015] eKLR which was cited with approval by G. V. Odunga J in *Maurice Okello Kaburu & another v Republic* [2022] eKLR

What then amounts to “reasonable doubt”? This issue was addressed by Lord Denning in *Miller v. Ministry of Pensions*, [1947] 2 ALL ER 372 where he stated:-

That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.’

30. No attempt has been made by the prosecution to prove the alternative charge of committing an indecent act with a minor, consequently, the same is dismissed.
31. The prosecution has failed to prove beyond reasonable doubt all the three ingredients of the offence of defilement as against the accused person. Consequently, this court returns a verdict of not guilty and



the accused person is hereby acquitted under section 215 of the Criminal Procedure Court and set at liberty forthwith unless lawfully held.

**DATED AND DELIVERED IN OPEN COURT AT SIAYA THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**J. P. MKALA**

**RESIDENT MAGISTRATE**

Delivered in the presence of:-

Ms. Kauma for state

Accused present

C/A John Mr. Kevin

