



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wekesa v Republic (Criminal Appeal E042 of 2025)  
[2025] KEHC 15151 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15151 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E042 OF 2025  
DR KAVEDZA, J  
OCTOBER 28, 2025**

**BETWEEN**

**IDRIS KEVIN WEKESA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 8th July 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. E020 of 2024 Republic vs Idris Kevin Wekesa)*

**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(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on 22<sup>nd</sup> January 2024 at Kawangware Area in Dagoretti Sub-County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the female genital organ (vagina) of R.A, a child aged 13 years. He was sentenced to serve twenty years (20) 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. PW1, the complainant, testified after a voir dire examination. She stated that she was at home with her three siblings on the material date. She later went to buy a mango at a shop next to the appellant's



posho mill. On her way back, the appellant called and asked her to deliver Kshs. 50 to his mother. She complied, but when she did not find her around 8 pm, she returned the money to the appellant. He then pulled her inside the posho mill. She told him she would scream, but he threatened her. He gagged her mouth with a scarf and dragged her into the adjacent room where there was a bed. He then lowered her shirt, panties and his shorts. The appellant then had sex with her, in her words, he inserted his 'dudu' into hers.

5. She testified that she pushed the dish rack above her, which fell on the appellant. He panicked and stepped away, allowing her to dress and escape. When she got home, she did not disclose the incident to anyone out of fear of the appellant's threats. A week later, she confided in her friend Triza, who informed the Deputy Headteacher. The teacher, in turn, notified PW1's class teacher, Mary, who accompanied PW1 to Gatina Health Centre. That evening, PW1 informed her mother, and the following day they returned to the school and later visited the hospital. They were subsequently referred to the Nairobi Women's Hospital. She concluded her testimony by stating that the appellant was her neighbour.
6. In cross-examination, she stated that the appellant initially asked her to take money to buy sugar but then grabbed her hand and tied her up.
7. PW2, the mother of PW1, testified that she was summoned by PW1's teacher on 31<sup>st</sup> January 2024. Upon arrival, she was asked whether she was aware of any illness affecting her daughter, which she denied. She was then directed to Gatina Dispensary, where she learned of the ordeal and received confirmation that PW1 had been treated. When she returned home, she calmly questioned her daughter, who disclosed that the appellant had defiled her on two separate occasions. PW2 reported the matter to the Chief and subsequently to Muthangari Police Station, where statements were recorded.
8. In cross-examination, PW2 stated that she had noticed her daughter walking with difficulty, but PW1 declined to disclose the reason. She concluded her evidence by stating that PW1 had contracted sexually transmitted infections.
9. PW3, the investigating officer, corroborated PW1's evidence. He testified that upon visiting the posho mill, he found two rooms, one of which contained a mattress.
10. PW4, a clinician from the Nairobi Women's Hospital, produced PW1's medical records. Upon examination, she noted vaginal lacerations, a torn hymen (not recent), and a foul-smelling yellowish discharge. PW4 stated that she examined the minor on two occasions, on 22<sup>nd</sup> January 2024 and 1<sup>st</sup> February 2024, respectively. She added that she could not determine whether the injuries resulted from penetration or other causes.
11. In his defence, the appellant testified that on 1<sup>st</sup> February 2024, police officers came to his posho mill and arrested him. He denied knowing the complainant or defiling her. He maintained his innocence.
12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
13. 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."
14. 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 offense termed defilement.
  - (3) A person who commits an offense of defilement with a child between the ages of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
15. The complainant's mother, PW2, evidence as supported by PW2's baptism card that she was born on 9<sup>th</sup> June 2010. She was therefore thirteen (13) years old at the time the alleged offense was committed. The age ingredient has been unequivocally established.
  16. The second element, penetration, is defined under section 2 of the *Sexual Offences Act* to include partial or complete insertion of genital organs. In this case, PW1 gave a detailed and coherent account of the incident. She stated that the appellant, their neighbour, pulled her into his inner room, lowered her shorts and undergarments, and inserted his penis into her vagina. PW4, the clinician, produced the medical report showing a recently torn hymen and a foul-smelling yellowish discharge. The element of penetration was therefore proved beyond reasonable doubt.
  17. On identification, PW1 was categorical that it was the appellant, their neighbour, who sexually assaulted her. Her testimony was detailed, consistent, and remained firm under cross-examination. PW2, the complainant's mother, also confirmed knowing the appellant as their neighbour and identified him as the person implicated by her daughter.
  18. The appellant, testifying as DW1, stated that on 1<sup>st</sup> February 2024 two people came to his workplace and informed him that he had been summoned by the Chief. On arrival, he learned of the accusation, which he denied. He claimed that the time variance showed the offence could not have occurred. Upon review, this court finds the appellant's defence inconsistent and implausible when weighed against the complainant's detailed and credible evidence, which was corroborated by PW2's report, PW4's medical findings, and PW3's testimony. The medical evidence confirmed penetration, reinforcing the prosecution's case.
  19. Accordingly, the prosecution proved all the ingredients of defilement beyond reasonable doubt. The appellant's defence did not raise any reasonable doubt, and the conviction under section 8(3) of the *Sexual Offences Act* is hereby affirmed.
  20. On sentence, the appellant was sentenced to twenty (20) years' imprisonment. The trial court considered the pre-sentence report, the appellant's mitigation, and the fact that he was a first offender before passing sentence. In the circumstances, I find no reason to interfere with the sentence.
  21. The upshot is that the appeal lacks merit and is dismissed in its entirety.
- Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF OCTOBER 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

