



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mosa v Republic (Criminal Appeal 10 of 2025)
[2025] KEHC 16346 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 10 OF 2025
DR KAVEDZA, J
NOVEMBER 13, 2025**

BETWEEN

DONALD SHITAVA MOSA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 17th April 2025 by Hon. A. Mwangi (CM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. E025 of 2023 Republic vs Donald Shitava Mosa)

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 No. 3 of 2006. The particulars were that on the 20th November 2022 at 1100hours at [particulars withheld] Estate, Langata sub-county within Nairobi County intentionally caused his penis to penetrate the vagina of L.B.M a child aged 16 years.
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, PW1, testified that on 20.11.2022, she went to her friend Stanno's house to borrow a science book but was told it was in use. She met Ronald, the appellant also known as Baba Stacy, who asked her to turn off the immersion heater in his kitchen. When she entered, the appellant locked the



doors, pulled her to the bedroom, undressed her by force, and lay on top of her, assaulting her for two hours while covering her mouth and instructing her not to scream. Afterward, he gave her Kshs. 100 and told her to keep quiet. She later gave the money to her friend Rael. On 9.2.2023, after missing her period, she informed her aunt, who tested her for pregnancy and confirmed she was pregnant. PW1 with her uncle reported the incident to Langata Police Station and was referred to Nairobi Women's Hospital.

5. During cross-examination, she states that she didn't scream as Ronald, the appellant had threatened to beat her. She also didn't tell anyone as she was afraid.
6. PW2, John Njuguna, a clinician at Nairobi Women's Hospital, produced the medical documents of PW1, on examination, she was calm; had no injuries on her body, female genitalia and her hymen was torn at 6 O'clock but was healed. She also tested positive for pregnancy which was at 6 weeks old. During cross-examination, he affirmed that the presence of a healed hymen which confirmed penetration.
7. PW3, Sergeant Peris Makio, from Langata Police Station, corroborated the evidence of PW1. During cross-examination, she states that she doesn't know the appellant, hence no reason to frame him.
8. PW4, EK, corroborated the evidence of PW1, and her husband, his friends and brothers were in the house when they interrogated Linnet, PW1 and the appellant, the latter denied the allegations stating that he paid linet to fetch water for him. She identified the appellant as Grich their neighbour.
During cross-examination, she states that they didn't frame the appellant.
9. PW5, George Morara corroborated the testimonies of PW1 and PW4. He states that Ronaldo denied the allegations but admitted to giving PW1 the Kshs.100. He knows the appellant as Ronaldo and they've had a good relationship as neighbours for a long time.
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 (4) 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.
 - (4) 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.
13. The complainant, PW1, evidence that she was born on 6th August 2006. She was therefore sixteen (16) years old at the time the alleged offence was committed. The age ingredient has been unequivocally been 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, PW1, 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 PW1's trousers and inner wear. He then inserted his penis into her vagina. PW2's



evidence who produced the medical reports form, which showed her hymen was recently torn and she tested positive for pregnancy. 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 and PW5, the complainant's Aunt and Uncle, 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 as he had travelled upcountry to tend to her sick daughter leaving his wife behind. He alleged that on 17.2.2023, a police officer came to his from Southern By Pass Police Post and told him to proceed to Langata Police Station. DW1 stated PW5 fabricated the complaint following a strained relationship due to a leadership position. However, he failed to provide any alibi or corroborative evidence to support his claim. The trial court found the defence unsubstantiated and an afterthought.
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, and PW4'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(4) of the [Sexual Offences Act](#) is hereby affirmed.
19. On sentence, the appellant was sentenced to 15 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 13TH DAY OF NOVEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Ms. Maina & Ms. Timoi for the Respondent

Karimi Court Assistant.

