Oduor v Republic (Criminal Appeal E113 of 2025)
[2025] KEHC 17361 (KLR) (25 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17361 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KIBERA

CRIMINAL APPEAL E113 OF 2025

DR KAVEDZA, J

NOVEMBER 25, 2025

BETWEEN

SIMON ODUOR ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 26TH June 2025 by Hon. M. Maroro (SPM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. S.O 030 of 2024 Republic vs Simon Oduor)

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 *akn ke act 2006 3 Sexual Offences Act* No. 3 of 2006. The particulars were that on the diverse dated between 2nd and 3rd March 2024 at Gatwekera area in Kibra Sub-County, within Nairobi County, intentionally caused his penis to penetrate the vagina of M.A.O a child aged 15 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 2nd March 2024, she went to the appellant's house and slept there on two consecutive days. The appellant wanted to have sex with her, she informed him she was

not. He however insisted and had sex with her for the two days she was there. On 4th March 2024, she heard a knock on the door and hid under the appellant's bed as she suspected it was her father. Rowdy youth stormed the house and took the appellant to Olympic Police Station while PW1 was taken to the hospital.

5. PW2 the complainant's father testified that on 1st March 2024 he received a call from PW1's class teacher inquiring about her absence from school. On 5th March 2024, PW1's mother informed him that she had been spotted at the appellant's house. They went and arrested the two in the house. She saw the shoes of PW1 under the table confirming that she was in the house. She was found hiding under the appellant's bed. He further stated he knows the appellant who was their neighbour.

6. PW3, John Njuguna, a clinician at Nairobi Women's Hospital. Upon medical examination of the minor, no physical and no fresh genital injury. There was torn and healing hymen. The whitish discharge was normal, and no bleeding was noted. During cross-examination, he stated that she had a healed hymen and old torn scar.

7. PW4, Corporal Melvin Muronji, attached to Sarangombe police post, was the investigating officer who charged the appellant with the offence of defilement.

8. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.

9. 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."

10. Further, section 8(1) and (3) of the *akn ke act 2006 3 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 twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

11. The Investigating officer, PW4, produced evidence that she was born on 25th May 2008. She was therefore fifteen (15) years old at the time the alleged offence was committed. The appellant was therefore a child within the law.

12. The second element of penetration is defined under section 2 of the *akn ke act 2006 3 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. She testified that the appellant lured her to his house and despite her refusal had sex with her for two consecutive days. The medical evidence on record indicated that upon her examination, there was torn and healed hymen. The element of penetration was therefore proved beyond reasonable doubt.

13. On whether the appellant was the perpetrator of the offence, the complainant maintained it was the appellant, who was her boyfriend, who had sexual intercourse with her for two days. She gave a detailed and consistent account of the incident. PW2, PW1's father, confirmed knowing the appellant as their neighbour and positively identified him as the perpetrator.

14. In his defence, the appellant. DW1 stated PW5 fabricated the complaint following a strained relationship with PW1's mother and PW2. He stated that they had been at loggerheads with PW1's family for a while. He further stated that PW2 knocked his tooth out and was arrested on 4th March 2024.

15. 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 PW3's medical findings, all supported by medical proof of penetration.

16. 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(3) of the *akn ke act 2006 3 Sexual Offences Act* is hereby affirmed.

17. On sentence, the appellant was sentenced to 20 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.

18. 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 25 TH DAY OF NOVEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.