



REPUBLIC OF KENYA



**Odhiambo v Republic (Criminal Appeal E094 of 2025)  
[2025] KEHC 17988 (KLR) (2 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 17988 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E094 OF 2025  
DR KAVEDZA, J  
DECEMBER 2, 2025**

**BETWEEN**

**COLLINE OCHIENG ODHIAMBO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. Kabuya I.M (SPM) 5th June 2025 at Kibera Chief Magistrate's Court,  
Sexual offence case No. E129 of 2024 Republic vs Colline Ochieng Odhiambo)*

**JUDGMENT**

1. The Appellant was charged and, after full trial, convicted by the Subordinate Court of the offense of defilement contrary to section 8(1) as read with 8(4) of the Sexual Offenses Act No.3 of 2006. The particulars were that on the diverse dates between the month of November 2023 to 26<sup>th</sup> September 2024 in Kibra Sub – County within Nairobi, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of MOA a child aged 17 years. He was sentenced to serve fifteen (15) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and sentence.
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 conclusion on that the evidence without overlooking the conclusions of the trial court, but bearing in mind it never saw the witnesses testify.
4. The prosecution called a total of four witnesses in support of their case. PW 1 the Complainant testified that she was 17 years and a Form Two student. She told the court that the appellant was both her



neighbour and her boyfriend of over two years. She stated that the appellant would summon her to a friend's house where they engaged in sexual intercourse on multiple occasions. The appellant's wife eventually discovered the relationship and reported the complainant to her mother, JA (PW2). When initially confronted by PW2, PW1 denied any involvement, and the matter temporarily subsided.

5. Several months later, PW1's sister observed her leaving the appellant's house secretly and informed PW2. By that time PW2 had reported PW1 missing at Kibra Police Station on 30<sup>th</sup> September 2024. Following intervention by community policing members, PW1 admitted that she had been in a sexual relationship with the appellant and had occasionally spent nights at his residence. She was thereafter taken to Coptic Hospital for medical examination.
6. The complainant further testified that she usually met the accused at night and sometimes spent the night at a friend's house (Ann). She admitted receiving money for food and snacks from the appellant and that he had advised her to return home from her friend's place. She maintained that they did not have sexual intercourse on every occasion they met and denied that one Samuel was her boyfriend. She further admitted that, when questioned by the community policing leader, she acknowledged having a boyfriend but did not identify the appellant as such.
7. PW2 the complainant's mother confirmed that the appellant's wife had left him after learning of his sexual relationship with PW1 and that she (PW2) was telling the truth in that regard. She further testified that the complainant was born on 31<sup>st</sup> March 2007 and produced her birth certificate.
8. PW3 Edith Kerubo a registered nurse at Coptic Hospital, examined PW1 and found irregular hymenal margins consistent with an old tear, indicative of previous penile penetration.
9. PW4 Sgt. Langat the Investigating Officer testified that he received the missing person report lodged by PW2 and conducted the investigation. Upon the appellant's arrest, he denied the offence, claiming he had merely provided food to PW1 because she was neglected by PW2.
10. When placed on his defence, the appellant denied committing the offence. He attributed the allegations to malice on the part of PW2, who, he claimed, was jealous because his family had shown kindness to her truant daughter. In cross-examination, the appellant admitted enjoying a good relationship with PW1 but maintained that PW2 was the architect of his present predicament.
11. After a full trial, the appellant was convicted accordingly. The appeal was canvassed by way of written submissions which have been duly considered which have been duly considered and there is no need to rehash.
12. 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."
13. 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.



14. The elements of defilement under Section 8(4) of the *Sexual Offences Act*, No. 3 of 2006: the victim's age, penetration, and identification of the perpetrator, while also considering the appellant's defence.
15. On age, PW1, testified she was 17 years old during the offence which occurred between 2023 and September 2024. PW2, her mother, produced her birth certificate, confirming her birth on 31<sup>st</sup> March 2007, establishing her as 17 years old at the material time, thus satisfying the age element.
16. On the element of penetration, PW1 gave a clear and consistent account that the appellant, whom she had dated for over two years, repeatedly summoned her to a friend's house where they engaged in sexual intercourse on multiple occasions. The phrase "engaged in sexual intercourse" in the context of the evidence can only be reasonably understood to mean penile-vaginal penetration. This direct evidence from the complainant is materially corroborated by the clinical findings of PW3, Edith Kerubo, a registered nurse at Coptic Hospital. PW3 observed irregular hymenal margins associated with an old tear, a condition she expressly linked to previous penile penetration. No alternative explanation for the injury was suggested or established. The court therefore finds the element of penetration proved beyond reasonable doubt.
17. The third element, PW1 knew the appellant intimately as both her neighbour and her boyfriend of over two years. She identified him in court without hesitation and narrated specific incidents linking him directly to the acts of sexual intercourse. Her evidence remained firm under cross-examination. The appellant's own defence admission that he enjoyed a "good relationship" with PW1 and provided her with money and food further reinforces the closeness of their association and affords circumstantial support to her identification. No suggestion of mistaken identity or malice sufficient to create doubt was sustained.
18. In his defence, the appellant denied any sexual contact, asserting that he merely assisted PW1 with food because her mother neglected her and that PW2 fabricated the case out of jealousy. That bare denial, unsupported by any independent evidence and contradicted by the coherent, corroborated testimony of the complainant, does not raise a reasonable doubt. The court finds the defence version implausible and rejects it.
19. Accordingly, having scrutinised the entirety of the evidence, the court is satisfied that the prosecution proved each of the three constituent elements of the offence beyond reasonable doubt. The conviction by the trial court was proper and is affirmed.
20. The appellant was sentenced to fifteen (15) years' imprisonment for defilement under Section 8(4) of the *Sexual Offences Act*, No. 3 of 2006. The trial court considered the pre-sentence report, the appellant's mitigation, and his status as a first offender in determining the sentence. In the premises, I see no reason to interfere.
21. Accordingly, the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF DECEMBER 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Absent



Mutuma for the Respondent  
Karimi Court Assistant.

