



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ajanga v Republic (Criminal Appeal E044 of 2025)  
[2025] KEHC 18291 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18291 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E044 OF 2025  
DR KAVEDZA, J  
DECEMBER 9, 2025**

**BETWEEN**

**RUEBEN AJANGA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence delivered by Hon.  
S. Temu (SPM) on 11th March 2025 at Kibera Chief Magistrate's Court,  
Sexual Offences case no. E025 of 2022 Republic vs Reuben Ajanga)*

**JUDGMENT**

1. The applicant was charged and, after a full trial, convicted for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve thirty (30) years imprisonment.
2. Being dissatisfied with the decision, he filed a petition of appeal challenging his conviction and sentence. In the petition of appeal dated 18<sup>th</sup> March 2025, the appellant raised 17 grounds which have been coalized as follows: The appellant challenged the totality of the prosecution's evidence against which he was convicted specifically that the ingredients of the charged were not proved beyond reasonable doubt. The appellant contended that trial court failed to consider his sworn defence. That the sentence imposed was illegal, harsh and did not consider the appellant's mitigation. 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 conclusion on that the evidence without overlooking the conclusions of the trial court, but bearing in mind that it never saw the witnesses testify.



4. The prosecution's case was that on 26<sup>th</sup> February 2022, the complainant, an eight-year-old girl (PW2), was playing with her friend K inside the residential plot at [Particulars Withheld], Nairobi. The appellant, Reuben, a neighbour who lived alone in the same plot and was well known to the child, called her into his house. Once inside, he gave her oranges and Kshs. 10, then touched her stomach and private parts over her clothing, removed her trousers and underwear, and inserted his penis into her vagina. The child felt pain but did not scream because the appellant warned her not to tell anyone. She testified that this was not the first time as the appellant had repeatedly defiled her since she was in Grade 2.
5. After the act, the child dressed and left the house. A neighbour named Lauren (or Laura), who was hanging clothes outside, saw the appellant come out first and look around before the child emerged. That same evening, Lauren went to the complainant's home and informed the child's mother (PW1). When the mother questioned her daughter, the child initially said she had gone for a pencil, but soon disclosed that the appellant had removed her clothes, had sexual intercourse with her, and then given her oranges and money. The child added that the appellant had done this, many times before and had always warned her to keep quiet.
6. That same night, the mother (PW1) took the child to Riruta Police Station. The police referred them to Nairobi Women's Hospital, where Clinical Officer Grace Mararo (PW4) examined the child. She noted redness and hyperaemia of the labia majora and an old hymenal tear, and completed the PRC, GVRC and P3 forms which were produced as exhibits.
7. The investigating officer, PC Woman Elizabeth Omusee (PW5), recorded statements, obtained the child's birth certificate confirming her date of birth as 7<sup>th</sup> March 2013, visited the scene, and arrested the appellant on 2 March 2022.
8. In his defence, the appellant gave a sworn defence, stating he had been at work on 26<sup>th</sup> February 2022 and only returned home between 5 and 6 p.m. He denied the allegations and said the child had visited his house only twice, when she had been sent by her mother for vegetables. He called Julius Silvester Mwaura (DW2) and Faith Wairimu (DW3) as witnesses. DW2 told the court that the complainant's family and the appellant were his tenants. DW3 stated she saw the appellant return home at about 5–6 p.m. on the material date.
9. The trial court convicted the appellant accordingly.
10. The appeal was canvassed by way of written submissions. Senior Counsel Khaminwa made comprehensive written and oral 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 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."
12. Further, section 8(1) and (2) 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.
    - (2) A person who commits an offence of defilement with a child aged eleven years or less shall, upon conviction, be sentenced to imprisonment for life.



13. The elements of the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, No. 3 of 2006, are the age of the complainant, penetration of her genital organ by the perpetrator's penis, and the identity of the perpetrator.
14. On the first element, the complainant (PW2), having been examined on voir dire, testified that she was in Standard 4 at the time of the offence on 26<sup>th</sup> February 2022. The investigating officer, PC Woman Elizabeth Omusee (PW5), produced the complainant's birth certificate confirming her date of birth as 7<sup>th</sup> March 2013. There was therefore no doubt that the complainant was a child aged eight (8) years old at the time of the offence.
15. On penetration, PW2 gave direct evidence that the appellant called her into his house in the residential plot at Maisha Poa, removed her trousers and underwear, and inserted his penis into her vagina, causing her pain. She stated that this was not the first occasion and that the appellant had been defiling her repeatedly since she was in Grade 2. This evidence was corroborated by the clinical findings of Grace Mararo (PW4) at Nairobi Women's Hospital, who noted redness and hyperaemia of the labia majora and an old hymenal tear consistent with repeated penile penetration. The PRC, GVRC and P3 forms were produced. The element of penetration is accordingly established beyond reasonable doubt.
16. On whether the appellant was the perpetrator, PW2 testified that she knew the appellant very well as "Reuben", a neighbour who lived alone in the same plot. She had been sent to his house by her mother on previous occasions and had no difficulty recognising him. Her mother (PW1) also positively identified the appellant in court as their long-time neighbour. The complainant's immediate disclosure to her mother on the night of 26<sup>th</sup> February 2022, prompted by information from the neighbour Lauren who had seen the child leaving the appellant's house, further reinforces the certainty of identification.
17. The appellant's defence that he barely knew the child and was elsewhere at the material time is wholly implausible in light of this clear, consistent and corroborated evidence.
18. The appellant's defence amounted to a bare denial and a partial alibi that he only returned home between 5 and 6 p.m. on the day in question. No evidence was led to support the alibi, and the defence raised no reasonable doubt against the strong prosecution case.
19. The prosecution therefore proved each element of the offence under section 8(1) as read with section 8(2) beyond reasonable doubt. The conviction is safe, and the appeal against conviction must fail.
20. The appellant was sentenced to thirty (30) years' imprisonment for defilement under section 8(2) of the *Sexual Offences Act*, No. 3 of 2006. In imposing sentence, the trial court considered the pre-sentence report, the appellant's mitigation, and his status as a first offender, and exercised its discretion. Although the sentence imposed was below the statutory minimum, it was a lawful exercise of discretion, and I find no basis upon which to interfere with it.
21. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF DECEMBER 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:



Dr. Khaminwa (SC) for the Appellant.

Mr. Mutuma for the Respondent

Ms. Karimi Court Assistant.

