



**Ayemba v Republic (Criminal Appeal E083 of 2025)
[2025] KEHC 18281 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E083 OF 2025
DR KAVEDZA, J
DECEMBER 9, 2025**

BETWEEN

PATRICK AYEMBA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 30th May 2025 by Hon. M. Maroro (P.M) at Kibera Chief Magistrate's Court Sexual Offences Case No. E005 of 2024 Republic vs Patrick Ayemba)

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(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars are that on 2nd January 2024 at Laini saba biashara street area in Kibra Sub County within Nairobi County, the appellant intentionally and unlawfully caused his penis to penetrate the anus of B.A A boy aged 10 years. He was sentenced to serve life 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 argued that the trial court failed to consider his defence. 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 prosecution called seven witnesses in support of their case. The complainant gave unsworn evidence after a voir dire examination. He told the court that on 2nd January 2024, while he was going



home from his grandmother's place, he encountered the appellant, who called and wanted to buy him chips. When he refused, the appellant forcefully held his hand and took him to his residence located around where children ride bicycles.

5. In the house, the appellant held a knife and threatened to stab him if he did not cooperate. He strangled him, undressed him, bent him over and laid him on the mattress. He then inserted his penis into his anus. After he was finished, he told him to go home. As he was going home, he encountered Uncle M, who took him to his mother since he was crying. His mother took him to the hospital, where he was examined and treated. The incident was reported to the police the following day. The complainant maintained that it was not the first time he had seen the appellant in the area.
6. PW4 JM testified that on the material day, while he was leaving work, he met the complainant, who was crying. When he inquired about the issue, the minor informed him that he had been defiled by a man known to him. He called his mother and informed her. Together, they went to the house where the complainant had allegedly been defiled, but they did not find the perpetrator. There was only a mattress and some clothes, and the house looked vacant.
7. PW2 the complainant's mother testified that the complainant was born on 4th August 2013 and produced his birth certificate to that effect. That on the material day, he was called by a neighbour and M who informed her that the complainant had been defiled. In their company, they took him to St Marks Hospital and reported the incident at Golf Course Police Station.
8. PW3 John Njuguna testified on behalf of Sharon Masanga, who examined the complainant but was not available. Upon examination, he had bruises on the anus at 8 O'clock and no physical injuries. The injuries were consistent with blunt penetrating trauma. He produced the P3 and PRC Forms.
9. PW5 SSgt Samwel Oketch testified that the appellant was arrested by members of the public. However, he refused to participate in the identification parade, but the complainant had already identified him. PW7 CI Evans Murage also testified that the appellant refused to participate in the identification parade, claiming that the complainant had been told to implicate him by her mother.
10. PW6 PC Joel Mbiha summarised the prosecution's evidence.
11. When placed on his defence, the appellant gave sworn evidence. He stated that on 2nd January 2024, he was in the house with his wife in the evening and did not leave. The next day, his wife left, and a mob came alleging that he had stolen a phone, but the case was later withdrawn. He maintained that PW5 had a grudge against him. He maintained that one Mutua Mwaniki was the one charged with sodomy and not him. He maintained his innocence.
12. 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."
13. 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.



14. On the element of penetration, the complainant's testimony provided a clear and detailed account of the incident, which was further substantiated by medical evidence adduced by PW3, the clinical officer. He produced the complainant's Post Rape Care (PRC) form, accompanied by medical records that disclosed the presence of bruises on the anus at 8 O'clock. This clinical finding unequivocally corroborated the complainant's assertion of penile anal penetration, lending significant weight to his narrative of the events that transpired. The convergence of testimonial and medical evidence thus sufficiently satisfied this essential ingredient of the offence.
15. The age of the complainant was a central issue and was conclusively proved. The birth certificate on record shows that the complainant was born on 4th August 2013 and was therefore 10 years old at the time of the offence. He was clearly a minor within the meaning of the law. The trial court correctly so found, and that finding was beyond dispute in light of the documentary evidence.
16. On whether the appellant was the perpetrator, it was the complainant's evidence that he was acquainted with the appellant, and this was therefore a case of recognition, not mistaken identity. Having endured the ordeal, the complainant had ample opportunity to observe and identify the appellant whom he had seen in the area. This was further reinforced by the unchallenged in-court identification, which remained unimpeached.
17. The appellant contended that the charge was a set-up orchestrated by PW5 due to an alleged grudge. The trial court duly considered this defence and correctly found it to be an afterthought. Further, the appellant's alleged alibi for the material day was not called as a witness.
18. In light of the foregoing analysis, it is abundantly clear that the prosecution discharged its burden of proof to the requisite standard beyond reasonable doubt. The evidence presented comprising the complainant's testimony, corroborative medical records, the age of the complainant and the unequivocal identification of the appellant formed a cohesive and unassailable case. Accordingly, the conviction stands affirmed.
19. On sentence, the appellant was sentenced to life imprisonment. During sentencing, the court considered the appellant's mitigation, and the pre-sentence report and meted the minimum sentence provided in law. In the premises, I see no reason to interfere with the sentence.
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 9TH DAY OF DECEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

