



REPUBLIC OF KENYA



**Beneti v Republic (Criminal Appeal E097 of 2025)
[2025] KEHC 18288 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E097 OF 2025
DR KAVEDZA, J
DECEMBER 9, 2025**

BETWEEN

CHACHA BENETI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Kabuya I.M (SPM) on 19th June 2025 at Kibera Chief Magistrate's
Court, Sexual offence case No. E008 of 2025 Republic vs Chacha Beneti)*

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(3) of the *Sexual Offences Act* No.3 of 2006. The particulars were that on the 21st day of May in Dagoretti Sub-County within Nairobi County, he intentionally and unlawfully caused his genital organ to penetrate a female genital organ, of L.I.K a girl aged 13 years. He was sentenced to serve thirty (30) 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 that it never saw the witnesses testify.
4. The complainant (PW1) testified that the appellant, an avocado seller well known to her in Lindi, Kibra, lured her and her younger sister to his house. A misunderstanding caused the sister to flee, leaving her alone with him in the house. The appellant tore the victim's dress, tied her to the bed with



- a trouser, later recovered as an exhibit, declared she would be his wife, and defiled her repeatedly while keeping her hostage.
5. He would leave and come back and defile her over and over again. She remained trapped there from 1st February to 8 February 2025, when she screamed for help and a neighbour rescued her, providing fresh clothes after learning the appellant habitually molested and held girls captive.
 6. On 9th February 2025, the complainant was examined at Nairobi Women's Hospital by clinician John Njuguna (PW2), who found a hyperaemic vagina and no hymen consistent with recent penile penetration.
 7. The complainant's mother, SC (PW3), told the court her daughter had left home on 1st February 2025 for a wedding and vanished until 8th February, when the child phoned, returned home, narrated the ordeal, and personally led her mother and several boys to the appellant's house. There, he resisted arrest but was overpowered and taken into custody.
 8. The investigating officer, P.C. Kagere (PW4), confirmed that by 9th February 2025, the appellant was already in custody. She recorded witness statements, visited the scene, and recovered the victim's torn dress, her underwear, and the appellant's black trousers used as a mouth gag, all of which were produced in court.
 9. At the close of the prosecution's case, a prima facie case was established, and the trial court put the appellant to his defence. He claimed that he was at home when a mob suddenly stormed in, an unknown girl identified him, and he was rushed to Kibra Police Station, where he first learned of the allegations against him. He maintained his innocence, insisting he was a stranger to the complainant and that the case was one of mistaken identity.
 10. 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.
 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 (3) of the *Sexual Offences Act*, No. 3 of 2006 provides thus: -

Defilement

- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (3) A person who commits an offence of defilement with a child between the ages of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
13. The elements of the offence of defilement contrary to section 8(3) 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. As to age, the complainant L.I.K (PW1) testified that she was 13 years old at the time of the offence in February 2025. The birth certificate produced indicated that she was born on 9th April 2011. There was therefore no doubt that the complainant was a child aged thirteen (13) years at the time of the offence.



15. As to penetration, PW1 gave direct evidence that the appellant tore her dress, tied her to the bed, and repeatedly had sexual intercourse with her over several days while she was held captive. This was corroborated by the clinical findings of John Njuguna (PW2) recorded on 9th February 2025, namely a hyperaemic vagina and absent hymen, which were consistent with recent penile penetration.
16. The recovery of the complainant's torn dress and underwear from the appellant's house further supports the fact of forceful intercourse. The element of penetration is accordingly established beyond reasonable doubt.
17. On identification, PW1 testified that she knew the appellant very well as the local avocado seller in Lindi, Kibra, that he had spoken to her and her sister on the road, lured them to his house, and was the same man who thereafter detained and defiled her. Her identification was reinforced when, immediately upon her rescue on 8th February 2025, she personally led her mother and others to the appellant's house, where he was arrested. The appellant's suggestion in his defence that he was a complete stranger to the complainant and that this was a case of mistaken identity is wholly implausible in light of this clear, consistent and corroborated evidence.
18. The appellant's defence was a bare denial coupled with a claim that an unknown girl had pointed him out to a mob. No evidence was led in support, 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(3) beyond a reasonable doubt. The conviction is safe, and the appeal against the conviction must fail.
20. The appellant was sentenced to 30 years' imprisonment for defilement under Section 8(3) 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 and exercised discretion. I see no reason to interfere with the sentence.
21. 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

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

