



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muyanze v Republic (Criminal Appeal 6 of 2025)  
[2025] KEHC 18681 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18681 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 6 OF 2025  
DR KAVEDZA, J  
DECEMBER 17, 2025**

**BETWEEN**

**PATRICK MUYANZE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
3rd April 2025 by Hon. C.M (PM) at Kibera Chief Magistrate's Court,  
Sexual Offences Case No. E090 of 2024 Republic vs Patrick Muyanze)*

**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(4) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the 4<sup>th</sup> day of August 2024, at Waithaka area in Dagoretti Sub-County within Nairobi County intentionally caused his penis to penetrate the vagina of J.W a child aged 16 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 analyze 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 he met the appellant when going to church, who pulled her to his house and instructed her not to scream. The appellant then proceeded to shut her mouth and touched her private parts. He then removed her clothes and proceeded to defile her. After he was done, she then left and told her mother what transpired. They later went to report the matter to the police station



- and then went to the hospital for examination and treatment. She identified the appellant who used to call her 'babe'.
5. During cross-examination, the complainant testified that the appellant was known to her as he was their neighbour. Further, that some people saw her leaving the appellant's house, and no one else, apart from the appellant, had ever touched her.
  6. PW2, John Njuguna, a clinician at Nairobi Women's Hospital, produced the medical documents of PW1, the victim. During medical examination, it was noted there were no injuries on the body and vaginal areas. Her hymen was torn, with a previous history of penetration. During cross-examination, PW2 stated that several activities can cause the hymen to break.
  7. PW3, Evelyne Wairimu, the mother of PW1 produced the birth certificate of PW1 which indicated that she was born on 22<sup>nd</sup> July 2008. She reiterated that the appellant was a neighbour who was a cart puller in their area.
  8. PW4 Teresia Wanjiru, Investigating Officer at Waithaka Police Station, summarised the prosecution's case.
  9. In his defence the appellant contended that on the material day, he was in his home when he saw two women and a child. One of the women was the complainant's mother who slapped him and accused him of defiling her child. That he went to report the incident to the police station where he was arrested. He told the court that he did not know the complainant or her mother and maintained his innocence.
  10. The appeal was canvassed by way of written 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 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 (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.
  13. The prosecution adduced evidence that the complainant was born on 22<sup>nd</sup> July 2008. Her birth certificate was produced to that effect. She was sixteen years of age at the material time and a child within the meaning of the law, and the age ingredient of the offence was duly established.
  14. The element of penetration is defined under section 2 of the *Sexual Offences Act* as including the partial or complete penetration of the vagina by the genital organs. PW1 gave a cogent and detailed account of the incident, testifying that the appellant, who was known to her, lured her into his house, touched her private parts, and thereafter inserted his penis into her vagina. This evidence was corroborated by the medical report, which revealed an old tear of the hymen with healed scarring. The absence of an intact hymen is consistent with prior penile penetration of the minor and supports the finding that penetration occurred.



15. As regards identification, PW1 was unequivocal that the perpetrator was the appellant, her neighbour. She provided a consistent and detailed description of the assault and remained unshaken under cross-examination. Her evidence was further corroborated by PW3, who knew the appellant as a neighbour and positively identified him as the offender. The conditions for identification were favourable, and the court is satisfied that the appellant was correctly identified.
16. In his defence, the appellant claimed that on 4<sup>th</sup> August 2024 he was at home when PW3 arrived with two women and a child, slapped him, and accused him of defiling her daughter. He denied the allegations and any prior acquaintance with PW1 or her mother. He further asserted that, when questioned, PW1 denied any sexual contact with him and instead implicated her cousin. Under cross-examination, he maintained that no witness had seen him with the complainant and that PW1 had been brought to his house that day. This defence amounted to no more than a bare denial and was rightly rejected by the trial court. I have arrived at the same conclusion.
17. The prosecution proved each ingredient of the offence of defilement beyond reasonable doubt. The appellant's defence raised no reasonable doubt in the prosecution case. The conviction under section 8(4) of the *Sexual Offences Act* is safe and is hereby affirmed.
18. On sentence, the appellant was sentenced to fifteen (15) 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.
19. 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 17<sup>TH</sup> DAY OF DECEMBER 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

