



**Nzeki alias Guka v Rpublic (Criminal Appeal E078 of 2025)
[2025] KEHC 18623 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E078 OF 2025
DR KAVEDZA, J
DECEMBER 17, 2025**

BETWEEN

WAMBUA NZEKI ALIAS GUKA APPELLANT

AND

RPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence of the trial court delivered by Hon. C.M Njagi (P.M) on 26th May 2025 at Kibera Chief Magistrate’s Court Criminal Case No. E071 of 2024 Republic vs Wambua Nzeki alias Guka)

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 life imprisonment.
2. Being dissatisfied with the decision, he filed a petition of appeal dated 3rd June 2025 challenging his conviction and sentence. In the petition of appeal, 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. PW2, SME, the minor’s mother, testified that on 17th June 2024 her daughter (SHO) disclosed that “Guka” (the appellant) had called her into his first-floor house in the same plot, removed her clothes,



- inserted his penis into her vagina, and covered her mouth when she screamed. The appellant thereafter warned her not to tell anyone, threatening to withhold sweets and end their friendship. PW2 reported the matter to hospital and police. The incident occurred in April 2024 and the minor had previously complained of painful urination. The appellant resided nearby, and the children played in a playground adjacent to his house.
5. PW3, the minor complainant (HS), born on 6th May 2018, testified that on the material day, while wearing pink trousers and a pink t-shirt, she went to the appellant's ("Guka's") house. The appellant threw her onto the bed, inserted his penis into her vagina, and released her when she screamed. He threatened to kill her if she disclosed the incident. She identified the appellant in court as the perpetrator and stated that no one else had touched her there.
 6. PW1, John Njuguna, a registered clinician at Nairobi Women's Hospital, produced the medical documents relating to the minor complainant, examined on 18th June 2024. The minor presented with painful urination following alleged defilement. Clinical findings revealed no external physical injuries, normal external genitalia, a broken hymen with no recent injury or scarring, and no redness. The minor was treated and discharged. PW1 explained that a broken hymen is permanent and may result from various causes; the absence of recent injuries or the presence of lubrication does not exclude penetration.
 7. PW4, Corporal Gladys Kirika, the investigating officer, testified that the defilement was reported on 18th June 2024 in respect of an incident in April 2024. The minor positively identified the appellant upon his arrest. PW4 produced the minor's birth certificate confirming her date of birth. No forensic examination of clothing or DNA testing was conducted due to delayed reporting.
 8. The defence adduced evidence through five witnesses, including the appellant. DW1, the appellant Wambua Nzeki alias "Guka", denied any knowledge of or involvement in the alleged defilement. He testified that in April 2024 he resided on the first floor in Waruku, Kangemi, with his wife. On the day of his arrest in June 2024, he was at home when police arrived. He stated that he worked at Embassy Hotel and knew nothing of the allegations. Initially, he claimed not to know the complainant or her family, but later acknowledged that their house was near the gate, not far from his, and that the children's playground was adjacent to his residence.
 9. DW2, BB, a work colleague of the appellant, testified that the appellant was a good person who had never harassed anyone and that he had heard no allegations of sexual misconduct against him. The appellant's off day was Sunday. No employment records were produced to corroborate attendance.
 10. DW3, Benson Kithuka Ngumo, a village elder acquainted with both the appellant and the complainant's family, expressed shock at the charges. He described the appellant's house as constructed of iron sheets, such that screams would be audible. He noted that the complainant's mother travelled frequently for work. The appellant lived with his wife. DW3 had commenced but not completed his own investigations and had not spoken to the complainant.
 11. DW4, JC, the family's house help from June 2024 (not employed in April 2024), testified that she slept with the children. While watching television, during a romantic scene, the minor allegedly stated that she was "already romantic with Guka". Upon the mother's return, the minor complained of painful urination and disclosed that "Guka" had touched her.
 12. DW5, JMW, the appellant's wife, testified that their iron-sheet house allowed sounds to be heard from her nearby vegetable stall. On Sundays (the appellant's off day), they attended church and thereafter operated their kibanda business. She alleged that the complainant's mother owed a debt at her stall and had been refused further vegetables on credit. She further stated that the complainant's mother wore



- very short dresses, that the appellant had no prior cases, never bought sweets for children, and had no extramarital affairs. The appellant worked Monday to Saturday.
13. The appeal was canvassed by way of written submissions. The comprehensive written submissions have been duly considered and there is no need to rehash them.
 14. 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."
 15. 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.
 16. The offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 2006 requires proof of three essential elements: that the complainant was a child under the age of eleven years; that there was penetration of her genital organs by the perpetrator's penis; and that the perpetrator was correctly identified.
 17. As regards age, PW4, Corporal Gladys Kirika, produced the complainant's birth certificate confirming her date of birth as 6th May 2018. The incident occurred in April 2024, when the complainant was six years of age and indisputably a child under eleven years within the meaning of section 8(2). This element was proved beyond reasonable doubt.
 18. On the element of penetration, the complainant (PW3), having been examined on voir dire and found competent to testify, gave direct and cogent evidence that the appellant, known to her as "Guka", called her into his house, threw her onto the bed, removed her clothes, and inserted his penis into her vagina. She felt pain and screamed, whereupon he released her. This account was corroborated by PW2, the complainant's mother, to whom the child disclosed the assault in June 2024, stating that "Guka" had put his "dudu" in her "susu" and covered her mouth when she screamed.
 19. Medical evidence adduced through PW1, John Njuguna, who produced the PRC form, GVRC treatment report, and P3 form, revealed a broken hymen with no scarring or recent injury. Although the examination occurred two months after the incident, the permanent nature of the hymenal rupture, coupled with the absence of any alternative explanation, is consistent with penile penetration. The element of penetration was accordingly established beyond reasonable doubt.
 20. On identification, the complainant knew the appellant well as "Guka", a neighbour residing on the first floor of the same plot. She positively identified him in the dock as the perpetrator. PW2 confirmed that the appellant lived nearby and that the children frequently played in the playground adjacent to his house. PW4 testified that upon arrest, the complainant unequivocally identified the appellant as the offender. Conditions for identification were favourable owing to prior acquaintance, and no mistake of identity arose. This element was satisfactorily proved.
 21. The appellant's defence comprised a denial of any knowledge of or contact with the complainant, coupled with assertions from defence witnesses suggesting motive or inconsistency on the part of the complainant's mother. This defence amounted to no more than a bare denial.



22. The defence evidence, including character testimony and suggestions of fabrication, was carefully considered but found to raise no reasonable doubt in the face of the clear, consistent, and mutually corroborative evidence of the child complainant, her mother, and the investigating officer, supported by medical findings.
23. The prosecution accordingly proved each element of the offence of defilement contrary to section 8(1) as read with section 8(2) beyond reasonable doubt. The conviction is safe and well-founded.
24. On sentence the trial court imposed a life sentence. During the sentencing, the trial court considered the gravity of the offence, the tender age of the complainant, and the appellant's mitigation. The sentence imposed was also legal and discloses no error of principle and warrants no interference.
25. In the premises, the appeal against conviction and sentence is without merit and is hereby dismissed.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF DECEMBER 2025.

D. KAVEDZA.

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

