



REPUBLIC OF KENYA



KENYA LAW
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**Onyango v Republic (Criminal Appeal 9 of 2025)
[2025] KEHC 18621 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 9 OF 2025
DR KAVEDZA, J
DECEMBER 17, 2025**

BETWEEN

JOHN ONYANGO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 9th June 2025 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. E074 of 2023 Republic vs John Onyango)

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 diverse dates between May and 9th July 2023 at Makina area in Kibra Sub-County within Nairobi County, intentionally caused his penis to penetrate the vagina JMM a child aged sixteen (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 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 adduced evidence through four witnesses in support of its case. PW1, J.M.M, testified that she was born on 10th March 2006. On 17th June 2023, whilst a Form Four student, she was



- approached by the appellant at her sister's plot in Kangemi. The appellant, who was known to her as a neighbour, lured her to his residence with promises of "good things".
5. Upon arrival at the appellant's house, he locked the door, played loud music, and forcibly removed her clothing. Notwithstanding her resistance and screams, the appellant proceeded to have sexual intercourse with her without her consent, causing her pain in the groin area.
 6. Following the act, the appellant, in the company of two other men, conveyed PW1 to a hospital; however, no treatment was administered owing to insufficient funds. PW1 remained at the appellant's residence overnight. On the evening of the following day, the appellant directed her to leave. She thereafter encountered her brother-in-law, Meshack Makanda (PW3), to whom she disclosed the sexual assault. She was subsequently taken for medical treatment, and the matter was reported to the police.
 7. Medical documentation, comprising the P3 form, PRC form, and treatment notes, was duly prepared. PW1 further testified that the appellant subsequently attempted to engage in sexual intercourse again, but she refused on account of persisting pain. On cross-examination, PW1 maintained that she was shocked by the appellant's conduct.
 8. PW2, John Njuguna, a clinician at Nairobi Women's Hospital, produced the medical records relating to PW1. Upon examination, PW1 appeared calm. No external physical injuries were observed, the hymen was torn, and the external genitalia were normal in appearance. Appropriate medication was administered. He further opined that painful urination or irritation is indicative of a urinary tract infection.
 9. PW3, Meshack Makanda, a relative of PW1, testified that on 17th June 2023, after escorting friends' home, he returned to find PW1 absent. Together with his wife, they searched for her the following day without success. They eventually located her; she was bleeding vaginally and informed them that she had suffered a miscarriage. PW1 requested to be taken to Cyril Hospital, where the appellant had previously conveyed her. Medical staff there confirmed the prior attendance but noted that no substantive treatment had been provided due to lack of funds, with only first aid administered to arrest the bleeding. The incident was reported at Kangemi Police Station, following which PW1 received treatment at Nairobi Women's Hospital.
 10. During cross-examination, PW3 stated that the appellant resided in the same plot as a neighbour and that, upon observing the bleeding, he initially believed it to result from a miscarriage.
 11. PW4, Corporal Gladys Kirika of Kangemi Police Station, the investigating officer summarized the prosecution's case.
 12. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
 13. 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."
 14. Further, section 8(1) and (3) 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.



- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
15. The investigating officer (PW4) produced the complainant's birth certificate, confirming her date of birth as 10th March 2006. She was thus seventeen (17) years old at the material time and a child in law. The age element was unequivocally proved.
16. Penetration, as defined in section 2 of the *Sexual Offences Act*, encompasses partial or complete insertion of the genital organs into the vagina. PW1 provided a detailed account of being lured to the appellant's house by this neighbour; upon her refusal of his advances, he locked the door, played loud music, and forcibly penetrated her. This was corroborated by PW2's medical evidence showing a torn hymen. Penetration was established beyond reasonable doubt.
17. On identification, PW1 firmly and consistently identified the appellant—her neighbor, as the perpetrator who lured and forcibly defiled her. She remained unshaken in cross-examination. PW3, her relative, knew the appellant as a neighbour in the same plot and confirmed his identity. Identification was not in dispute and was satisfactorily proved.
18. The appellant admitted being a neighbour but denied defilement. He claimed PW1 visited voluntarily on 17th June 2023 seeking "good things", refused to leave, and stayed overnight while he was at work the next day, only ejecting her later. He acknowledged her student status.
19. This defence constituted a bare denial of force. The trial court rightly rejected it as raising no reasonable doubt. I have arrived at the same conclusion that the defence was an afterthought.
20. Accordingly, the prosecution proved all the elements of defilement beyond reasonable doubt. The appellant's defence does not raise any reasonable doubt, and the conviction under Section 8(4) of the *Sexual Offences Act* is hereby affirmed.
21. 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.
22. 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 17TH DAY OF DECEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Auga for the Appellant

Mr. Mutuma for the Respondent

Karimi Court Assistant.

