



**Omeno v Republic (Criminal Appeal E079 of 2025)  
[2025] KEHC 18869 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18869 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E079 OF 2025  
DR KAVEDZA, J  
DECEMBER 19, 2025**

**BETWEEN**

**VITALIS KEYA OMENO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered  
by Hon. Kabuya (SPM) on 22nd May 2025 at Kibera Chief Magistrate's  
Court Sexual offence case No. E015 of 2024 Republic vs Vitalis Keya Omeno)*

**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 Offenses Act No.3 of 2006. He was sentenced to serve twenty (20) years' imprisonment.
2. Aggrieved, he filed an appeal, challenging his conviction and sentence. In his appeal, he 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 upon him.
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 it never saw the witnesses testify.
4. PW1, the complainant, a female minor born on 4<sup>th</sup> March 2009 (aged 15 years at the material time, resided with her parents in Soweto, Nairobi. On 30<sup>th</sup> January 2024 at approximately 20:00 hours, after bathing downstairs, she was returning upstairs carrying a bucket when the appellant (identified in court as Tyson, a downstairs neighbour known to her by sight and name) accosted her at his door. He seized her hand, covered her mouth, pulled her into his single room (lit with blinking lights), threw her onto



- his bed, removed her lessso, leaving her in a sweater and without underwear, and penetrated her private parts with his. She was unable to scream due to his grip.
5. During the act, her uncle (J) knocked and entered, causing the appellant to stop. J exclaimed and instructed PW1 to leave, and she tied the lessso around herself and exited. Outside, she met her father (PW2, PSW) in the corridor. She heard slapping inside the room.
  6. Angered, PW2 slapped PW1 once. She was frightened and fled to friend Virginia's house for the night. The following day, located via Virginia's father, she reported to the chief, was taken to Nairobi Women's Hospital for examination and the matter was reported at Langata Police Station. P3 form, PRC form, and GVRC form were filled.
  7. PW2, PSW (father), corroborated PW1's date of birth. On the evening in question, PW1 went to bathe downstairs and did not return. Concerned, he searched, enlisting neighbour Rhoda Otieno and cousin J who resided near the appellant. J borrowed PW2's torch, entered the appellant's house under pretext, and found PW1. PW1 emerged and he locked the appellant inside until police arrived. PW1 fled overnight but was found the next day. PW2 took her to the chief, hospital, and police; PW1 disclosed defilement.
  8. PW6 JH the complainant uncle found the complainant inside the appellant's house. The complainant was in his bed. A scuffle ensued when the appellant refused to let him give him access leading to the complainant sneaking out. The incident was reported to the police.
  9. At the hospital, the complainant was examined and Anne Mutheu who was not available to testify. Her evidence was presented by John Njuguna PW5. The observations were that the complainant's genitalia was normal. Her hymen was torn and healed.
  10. PW3 PC Wairia visited the scene and found the appellant locked inside the house from outside. PW4, Ssgt Peris Mwakio the investigating officer recorded statements and charged the appellant.
  11. In his defence, the appellant testified that on the material day, he was in the house where he was attacked by two people, the PW2 and PW6 alleging he had defiled the complainant. He was locked inside the house until police arrived. He denied committing the offence and maintained his innocence. He told the court that he had no quarrel with the two prior to the incident.
  12. DW2 the appellant's father told the court that when he discovered that his son had been locked inside the house, he organised for police officers to come and resolve the matter.
  13. DW3, a neighbour told the court that when the police arrived at the scene and the appellant's door was opened, the appellant was the only one inside.
  14. The appellant was subsequently convicted and sentenced accordingly.
  15. 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.
  16. 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."
  17. 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.
18. The elements of the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*, No. 3 of 2006, are: proof that the complainant was a child aged between 12 and 15 years, penetration of her genital organs by the perpetrator's penis, and positive identification of the perpetrator as the author of the crime.
  19. As to age, PW1 testified that she was born in 2009, and her birth certificate confirmed her date of birth as 4th March 2009. This made her 14 years and 10 months old on 30 January 2024, well within the 12 – 15 year bracket. PW2, her father, corroborated the birth certificate. There is therefore no doubt that the complainant was a child for the purposes of section 8(3).
  20. As to penetration, PW1 gave direct and unchallenged evidence that the appellant pulled her into his room, threw her onto the bed, removed her lessso (leaving her without underwear), and inserted his private parts into hers. The act was ongoing when interrupted by PW6 (uncle J H), who entered the room and found her on the bed. This evidence was corroborated by the clinical findings admitted through PW5 (John Njuguna), showing a torn and healed hymen consistent with penile penetration. Though the tear appeared healed, this does not negate recent defilement, particularly given PW1's credible and consistent account. Medical evidence is corroborative as the sworn testimony of the child victim, if believed, suffices. The element of penetration is established beyond reasonable doubt.
  21. On identification, PW1 knew the appellant as "Tyson", a downstairs neighbour whom she had seen regularly. She identified him in court without hesitation. The offence occurred inside his lit, albeit blinking room, and PW6 entered mid-act, confirming the appellant's presence. PW2 met PW1 immediately upon her exit from the appellant's house. The appellant was then locked inside until police (PW3) arrived and arrested him. Conditions were favourable for accurate recognition, and there was no mistaken identity. The appellant's suggestion of false accusation arising from a sudden attack holds no weight against this clear, corroborated evidence.
  22. The appellant's defence amounted to a bare denial being that he was attacked by PW2 and PW6 without prior quarrel and falsely accused. DW2, his father and DW3 a neighbour merely confirmed police arrival and that the appellant was alone inside when the door was opened, facts which are consistent with the prosecution case after interruption. No evidence supported the defence, and it raised no reasonable doubt.
  23. The prosecution therefore proved each element of the offence under section 8(3) beyond reasonable doubt. The conviction is safe, and the appeal against conviction fails.
  24. The appellant was sentenced to twenty (20) years' imprisonment, the mandatory minimum prescribed under section 8(3) for defilement of a child aged 12 – 15 years. The trial court had no discretion to impose a lesser term. There is no basis to interfere with the sentence.
  25. In the premises, the appeal against conviction and sentence lacks merit in dismissed in its entirety.  
Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF DECEMBER 2025**

**D. KAVEDZA**



## **JUDGE**

In the presence of:

Appellant Present

Mr. Mutuma for the Appellant

Karimi Court Assistant.

