

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E106 OF 2025

PATRICK SAULO.....
.....APPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 2nd February 2025 by Hon. Diasy Mutai (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E039 of 2024 Republic vs Patrick Saulo)

JUDGEMENT

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(3) of the Sexual Offences Act No. 3 of 2006. The particulars were that on 16th and 20th March 2024 at Maumau Area in Kangemi Location, Dagoretti Sub County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of E.A a child aged 15 years. He was sentenced to serve twenty (20) years imprisonment.
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 complainant (PW1) testified after a voir dire examination. She stated that she had visited the appellant's house several times with her friend Maureen. The appellant asked her age and she told him she was fifteen. He proposed that they date and she agreed. On one earlier occasion he tried to have sex with her, but she ran away. On 20th March 2024 she went to his house again.
5. The appellant undressed her and himself, then had sexual intercourse with her. She told him to stop. While they were in the house they heard three knocks at the door. PW1 hid under the bed. The visitor was her father (PW3). PW3 beat both PW1 and the appellant, then took them to the police station. The appellant was taken to hospital for treatment. In cross-examination PW1 said she regarded their relationship as friendship only. The appellant had left keys for her twice to arrange the house. On the second occasion she carried water with Maureen's help and he gave her Kshs. 100.
6. PW2, John Njuguna, a clinician at Nairobi Women's Hospital, produced the P3 form and clinical notes. The examination revealed fresh lacerations to the posterior fourchette and a torn hymen. There was no active bleeding or discharge and no external bodily injuries. PW1 appeared calm. In re-examination PW2 confirmed the presence of a posterior laceration and the torn hymen.
7. PW3, Benson Ngaira, father of PW1, testified that on the material day he returned from work and found the door open. He went to a shop to leave the key and the shopkeeper directed him to look for PW1 at the appellant's house. He went there, the appellant opened the door and denied seeing PW1. PW3 called PW1, who

came out from under the bed and confessed what had happened. PW3 called the Children's Officer and left the matter to them. He denied knowing of any relationship between PW1 and the appellant, though he acknowledged that the appellant was their neighbour with whom they had previously had a good relationship.

8. PW4, Joshua Agwaro, a child protection volunteer at Kitusuru Ward, stated that on the material day he received a call about a parent beating a child. He attended, spoke to PW1 and the appellant, and took them to Kangemi Police Station. Zipporah Wangare of the gender defenders assisted in taking PW1 to hospital.
9. PW5, Corporal Gladys Kirika of Kangemi Police Station, gave evidence that corroborated the accounts of PW1 and PW3 regarding the report, arrest and investigation.
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 (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.

13. The complainant, PW1, produced her birth certificate in evidence, establishing that she was born on 29th September 2008. She was therefore fifteen years of age at the time of the alleged offence on or about 20th March 2024. The age ingredient of the offence of defilement under section 8(3) of the Sexual Offences Act was proved beyond reasonable doubt.
14. On the element of penetration, section 2 of the Sexual Offences Act defines the act to include any partial or complete insertion of the genital organs of one person into those of another. PW1 gave a clear and detailed account. She testified that on the material date she entered the appellant's house. The appellant removed her clothing and then his own before inserting his penis into her vagina. She further stated that she told him to stop.
15. This direct evidence of penetration was corroborated by the medical report produced by PW2, John Njuguna, a clinician at Nairobi Women's Hospital. The P3 form and accompanying clinical notes recorded a recently torn hymen with fresh lacerations to the posterior fourchette that were in the process of healing. No active bleeding or discharge was present, and PW1 displayed no external bodily injuries and appeared calm at examination. These findings were consistent with recent penile-vaginal penetration and supported PW1's account of the act.
16. On identification, PW1 was resolute that the perpetrator was the appellant, whom she knew well as their neighbour. She provided a consistent and unshaken narrative of the incident throughout her evidence-in-chief and under cross-examination. PW3, her father Benson Ngaira, confirmed that the appellant was their neighbour and positively identified him as the person discovered with PW1 in his house on the material day. PW3

testified that, having been directed to the appellant's premises, he found the appellant who initially denied PW1's presence; PW1 then emerged from under the bed and admitted what had occurred.

17. The appellant's defence was that he was a neighbour but not present in the manner alleged. He claimed PW1 came to his house asking for Maureen, whom he said was in college; she sat on his bed; shortly thereafter PW3 knocked, PW1 hid under the bed, the appellant told her to come out, and PW3 began beating her. He was then arrested and taken to the Gender Office. The trial court rejected this version as unsubstantiated, implausible and an afterthought, having regard to the complainant's credible demeanour and the consistency of her testimony.
18. Upon review, this court concurs. The appellant's account is inconsistent with the prompt discovery by PW3, the unchallenged medical evidence of recent penetration, and PW1's detailed, coherent and unshaken testimony. No credible explanation was advanced for the presence of PW1 concealed under the bed in the appellant's house or for the genital injuries observed shortly afterwards.
19. The prosecution therefore proved all the essential elements of defilement contrary to section 8(3) of the Sexual Offences Act beyond reasonable doubt. The appellant's defence raises no reasonable doubt. The conviction is affirmed.
20. The appellant was sentenced to 20 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.
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 21st day of
January 2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

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