



REPUBLIC OF KENYA



**Mutiso v Republic (Criminal Appeal E112 of 2025)
[2026] KEHC 406 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E112 OF 2025
DR KAVEDZA, J
JANUARY 26, 2026**

BETWEEN

HENRY MUTISO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 12TH May 2025 by Hon. M. Maroro (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E077 of 2022 Republic vs Henry Mutiso)

JUDGMENT

(Being an appeal against the original conviction and sentence delivered on 12TH May 2025 by Hon. M. Maroro (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E077 of 2022 Republic vs Henry Mutiso)

JUDGEMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court on two counts of offence of defilement contrary to section 8(1) as read with 8(2) of the Sexual Offences Act No. 3 of 2006. The particulars were that 12th and 21st July 2022, at Greenhut area in Kibra Sub-County County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of M.A and I.M children aged seven and five years respectively. He was sentenced to serve life 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. PW1 (M.A.) gave an unsworn statement that on 21st July 2022, after being sent home from school for exam fees, she was taken by friends to the Appellant's residence, known as 'Mbaba wa masweet'. She testified that the Appellant isolated her, administered an oral drug, and applied a substance to her genitalia. She stated the Appellant then defiled her, an act she described as 'tabia mbaya', causing her physical pain. She alleged that the Appellant cautioned her against disclosure and noted the presence of an elderly woman on the premises.
5. PW3 (I.M.) also provided an unsworn statement, corroborating that the Appellant administered medicine to her and her sister. She testified that the Appellant defiled her (describing the insertion of his 'susu' into hers) and compelled her to perform oral sex. She further stated that she witnessed the Appellant engaging in similar acts with PW1. She identified the Appellant in court as the perpetrator.
6. PW2 (Caroline Avwenda), the mother of the minors, testified that upon their return, she noted a strong scent of sweets. Following an interrogation during which she admitted to corporal discipline, the minors confessed to frequent visits to the Appellant's house. PW2 testified that the children described being given medicine for their private parts and being forced to perform oral sex. She observed a whitish discharge on I.M.'s undergarments. PW4 (Roseline Ondisa) provided testimony that corroborated the account given by PW2 regarding the minors' allegations.
7. PW5 (Dr Chebet Chirchir) produced P3 forms for both minors. The examination of I.M. revealed vaginal inflammation, a perforated hymen indicating forceful insertion, and a foul-smelling discharge. The examination of PW1 revealed bruises on the left upper thigh and a perforated hymen. PW5 concluded that the acts appeared to have occurred on multiple occasions.
8. PW6 (Lauryne Mwende), a clinical officer, produced PRC forms. Regarding I.M., she noted evidence of both oral and vaginal sexual assault, a 1cm bruise on the outer thigh, and genital inflammation. Regarding PW1, she recorded vaginal inflammation and discharge.
9. PW7 (PC Esther Kagiera) testified to the procedural aspects of the case. Her evidence covered the formal reporting of the matter at Kibra Police Station, the subsequent arrest of the Appellant, and the conduct of the criminal investigation following the minors' identification of the scene and the perpetrator.
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 (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.



13. The complainant's mother (PW2) produced birth certificates for M.A and I.M in evidence, establishing that M.A was born on 9th March 2014 and I.M on 29th April 2016. The incident occurred in July 2022, rendering them eight years and six years of age respectively at the material time. The age element of the offence of defilement under section 8(2) of the Sexual Offences Act was proved beyond reasonable doubt.
14. As to 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 (M.A) and PW3 (I.M) gave clear and detailed evidence. They testified that, on the material date, they entered the appellant's house, he administered a drug for them to swallow, applied medicine to their private parts, then climbed on top of them and defiled them. PW3 gave a materially similar account of the events.
15. This direct evidence of penetration was corroborated by the medical report and P3 forms produced by PW5 (Dr Chebet Chirchir, Mbagathi District Hospital), supported by accompanying clinical notes. The examinations disclosed red vaginal walls, perforated hymens (indicative of forceful penetration), and a whitish, foul-smelling discharge in both complainants. The findings were consistent with recent penile-vaginal penetration and accorded with the accounts of PW1 and PW3. Preventive treatment was administered.
16. On identification, PW1 remained resolute that the perpetrator was the appellant, a person she (and PW3) had frequently visited to receive sweets. PW1's account was consistent, detailed and unshaken in evidence-in-chief and under cross-examination. PW3, her sister, independently and positively identified the appellant as the perpetrator.
17. The appellant's defence was that on Tuesday 18 July 2022 he travelled to his rural home for a break, returned to Nairobi on Thursday after receiving a call concerning his employer's daughter's illness. He maintained that he was at his workplace in Nairobi by approximately 11:00 on Friday when village elders, two women and three children arrived, whereupon an elder pointed him out, leading to his arrest. This account was supported by DW2 (his son) and DW3 (his wife). The trial court rejected it as unsubstantiated, implausible and an afterthought, having regard to the complainants' credible demeanour and the consistency of their testimony.
18. This court concurs. The appellant's version is irreconcilable with the unchallenged medical evidence of recent penetration in both complainants and with the coherent, detailed and unshaken testimony of PW1 and PW3. No credible explanation was offered for the genital injuries or foul-smelling discharge observed shortly after the incident.
19. The prosecution proved all essential elements of defilement contrary to section 8(2) of the Sexual Offences Act beyond reasonable doubt in respect of both counts. The defence raises no reasonable doubt. The convictions on both counts are affirmed.
20. The appellant was sentenced to life 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 26th day of January 2026

D. KAVEDZA



JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

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