



REPUBLIC OF KENYA



**Munundi v Republic (Criminal Appeal E127 of 2025)  
[2026] KEHC 1632 (KLR) (18 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1632 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E127 OF 2025  
DR KAVEDZA, J  
FEBRUARY 18, 2026**

**BETWEEN**

**ENOCK OLINGA MUNUNDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 30TH  
January 2025 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court,  
Sexual Offences Case No. S.O E056 of 2023 Republic vs Enock Olinga Munundi))*

**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(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the diverse dates between 25<sup>th</sup> February to 22<sup>nd</sup> April 2023 in Dagoretti within Nairobi County, the appellant intentionally caused his penis to penetrate the vagina of JK, a child aged 13 years. He was sentenced to serve thirty (30) 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. PW1, the minor, testified on oath following a voir dire examination. She stated that on 25<sup>th</sup> February 2023, she was beaten and chased from home by her mother for failing to wash utensils. At approximately 7.00 pm, while seeking a place to sleep, she encountered the appellant, who arranged and



paid for accommodation at a lodging where she spent the night alone. The following day, the appellant secured a house near the Chief's office in Dagoretti South, paying rent of Kshs. 2,500 via M-Pesa.

5. PW1 further testified that the appellant purchased a blanket and mattress for her, provided food, and gave her Kshs. 100 daily. She resided in the house for approximately two months. During this period, the appellant bought household items and, on occasions when he visited, had sexual intercourse with her, inserting his penis into her vagina. She described the appellant as her friend and confirmed that he was aware she was a school pupil, having seen her in uniform on several occasions.
6. PW1 recounted meeting her mother at a market in the company of the appellant. Her mother informed the appellant that the minor had been missing. Both were taken to Riruta Police Station. The appellant had previously instructed PW1 to deny knowledge of her family if she encountered them. PW1 added that her mother and the appellant enjoyed a good relationship as neighbours.
7. In cross-examination, PW1 confirmed that the appellant defiled her on multiple occasions and directed her to remain silent and not alert neighbours. She disclosed her whereabouts only to her friend A, who visited her. PW1 did not inform anyone else of her location. Upon learning that her parents were searching for her, the appellant restrained her from leaving the house.
8. In re-examination, PW1 stated that the appellant telephoned her mother to claim that PW1 had gone to her father, before disconnecting the call.
9. PW2, EM, the minor's mother, testified that on 25 February 2023 she returned home to find PW1 conversing with the appellant. A quarrel arose between PW2 and PW1, after which the minor left and went to the appellant. PW2 later met the appellant, who stated that PW1 was with him because PW2 had slapped her. PW2 instructed PW1 to return home, but the child ran away. On the following Monday, PW2 reported the disappearance to the school and the chief, but the child was not located.
10. PW2 made a second report to the chief and was issued an occurrence book. She subsequently encountered PW1 and the appellant at a market. The appellant attempted to assault her; she raised an alarm and he was arrested. PW2 stated that the minor was taken to hospital for examination, underwent an abortion, and continues to experience difficulty walking.
11. PW3, John Njuguna, a clinician at Nairobi Women's Hospital, produced medical records of the examination of the minor. She appeared calm with no external physical injuries. The hymen was torn and in the process of healing. Laboratory tests revealed no sexually transmitted infection and no pregnancy. The minor was diagnosed with bacterial vaginosis and a urinary tract infection, for which she received treatment and antibiotics.
12. PW4, Corporal Pauline Wambui, attached to the Gender Desk at Riruta Police Station, gave evidence that corroborated the accounts of PW1 and PW2.
13. The appeal was canvassed by way of written submissions, which 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 (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.
16. On the element of age, the investigating officer, PW4, produced evidence confirming that the minor was born on 29<sup>th</sup> September 2010. At the time of the alleged offence, she was therefore fourteen years old. This satisfied the statutory requirement that the victim be a child under eighteen years, and the age ingredient was unequivocally established on the record.
17. On the element of penetration, Section 2 of the *Sexual Offences Act* defines penetration to include any partial or complete insertion of the genital organs of one person into the genital organs of another. PW1, the complainant, gave a clear and detailed account in her testimony. She stated that the appellant had sexual intercourse with her on multiple occasions during the period when he visited her at the house he had rented for her in Dagoretti South. She specifically described the act of the appellant inserting his penis into her vagina. This oral evidence was materially corroborated by the medical findings of PW3, the clinician at Nairobi Women's Hospital. The examination revealed a torn hymen in the process of healing, consistent with repeated penile penetration. No other explanation for the condition of the hymen was advanced or supported by the evidence. The court was satisfied that the element of penetration was established beyond reasonable doubt.
18. On the identity of the perpetrator PW1 was firm and consistent in her identification of the appellant as the person who defiled her. She described him as the caretaker at their plot and confirmed that they were neighbours. She provided a detailed narrative of their interactions, including how he arranged accommodation for her, paid rent via M-Pesa, purchased household items, and visited her regularly. PW2, the complainant's mother, knew the appellant well as a neighbour and positively identified him as the individual involved. There was no suggestion of mistaken identity, and the complainant's evidence on identification was unshaken in cross-examination.
19. The appellant, testifying as DW1, denied the allegations entirely. He asserted that the case was fabricated and claimed that PW1 had stated it was he who sent her to Edwin's house. He challenged the prosecution's case by questioning why the investigating officer did not call witnesses from the lodging where the minor initially stayed, and why no evidence was adduced to link him directly to the rented house. He maintained that he had never stayed with the girl and was present with PW2 when the minor was eventually found.
20. Upon careful review, the court found the appellant's defence inconsistent and implausible when weighed against the prosecution's evidence. The complainant's testimony was detailed, coherent, and consistent throughout examination-in-chief, cross-examination, and re-examination. It was materially supported by PW2's account of the events leading to the minor's disappearance and recovery, as well as by the unchallenged medical evidence demonstrating penetration. The appellant's assertions lacked corroboration and did not create any reasonable doubt as to the prosecution's case.
21. In the result, all essential elements of the offence of defilement under section 8(3) of the *Sexual Offences Act* were proved beyond reasonable doubt. The appellant's defence failed to raise any reasonable doubt. The conviction is accordingly affirmed.
22. On sentence, the appellant was sentenced to thirty (30) years' imprisonment. The record shows that the trial court considered the pre-sentence report, the appellant's mitigation and the fact that he was a first offender before arriving at that sentence.



23. Section 8(3) of the *Sexual Offences Act* prescribes a minimum sentence of twenty (20) years' imprisonment. While the court retains discretion to impose a higher sentence where circumstances so warrant, that discretion must be exercised judiciously and proportionately, and reasons must be given for any upward departure from the statutory minimum.
24. In the present case, the trial court did not identify any aggravating factors to justify the imposition of a sentence substantially above the minimum prescribed by law. In the absence of such justification, a custodial term of thirty years cannot be said to be proportionate to the offence and the offender's circumstances, particularly considering that the appellant was a first offender.
25. In the premises, the appeal on sentence succeeds to that extent. The sentence of thirty (30) years' imprisonment is set aside and substituted with a sentence of twenty (20) years' imprisonment, to run from 23<sup>rd</sup> April 2023, the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF FEBRUARY 2026**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

