



**Nashali v Republic (Criminal Appeal E101 of 2025)  
[2026] KEHC 1159 (KLR) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1159 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E101 OF 2025  
DR KAVEDZA, J  
FEBRUARY 10, 2026**

**BETWEEN**

**STEPHEN NASHALI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 30th June 2025 by Hon. M. Murage (PM) at Kibera Chief Magistrate's Court, Sexual Offence Case No. E058 of 2023 Republic vs Stephen Nashali))*

**JUDGMENT**

1. The appellants were charged and, after a full trial convicted for the offence of Defilement Contrary to Section 8 (1) (2) of the Sexual Offences Act No.3 of 2006. The particulars are that the appellant on 20<sup>th</sup> April 2023 in Kibra Sub-County within Nairobi County, intentionally and unlawfully caused his penis to penetrate the vagina of VAL child aged 9 years. He was sentenced to life imprisonment.
2. Being aggrieved, the appellant filed the present appeal challenging the totality of the prosecution evidence against which they were convicted. They complained that the sentence imposed was harsh and excessive. They urged the court to quash the conviction and set aside the sentence imposed.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See Okeno v Republic [1972] EA 32).
4. The prosecution called a total of four (4) witnesses in support of its case.
5. PW1 the complainant a minor born on 20<sup>th</sup> October 2013 (birth certificate produced), testified that on 20<sup>th</sup> April 2023 she was left at home while her mother went to work. A man, whom she later identified



as the appellant, asked her to assist him in carrying water, which she could not manage due to its weight. He then invited her into his house to wash utensils and subsequently clothes. He instructed her to remove her clothes and bend forward facing a table. He removed her leggings and underwear, exposed his penis, and inserted it into her vagina. She cried in pain.

6. The appellant gave her something resembling a sweet, after which she felt dizzy. He told her to go home and bathe. Upon returning, her elder sister questioned her about improper conduct, and PW1 confessed what had transpired. Her sister took her to the appellant's house, where he emerged but denied the accusations levelled against him. The matter was reported to their mother.
7. The following morning, PW1 was taken to Coptic Hospital for examination and treatment. She identified the appellant in court as the perpetrator, noting she had previously seen him when buying vegetables and that he lived nearby in another plot. His house contained a seat, bed, and utensils.
8. PW2 EI, PW1's mother, testified that on 20<sup>th</sup> April 2023 she returned home at 8:00 pm and found PW1 kneeling as punishment. She was informed by PW1's sister that the child had come from a neighbouring plot and what had transpired. She took PW1 to Coptic Hospital the next day. She confirmed the appellant lived in a nearby plot and had been identified as the offender.
9. PW3 JM, PW1's elder sister, testified that on 20<sup>th</sup> April 2023, around 11:00 am, PW1 disclosed that a man had invited her to wash clothes, instructed her to bend, and committed an improper act. PW1 led her to the man's door. The man appeared shaken but said nothing. They returned home, and PW3 later informed PW2.
10. PW4 Loreen Mwendu, a clinician at Coptic Hospital, examined PW1 on 21<sup>st</sup> April 2023. She noted whitish-yellowish foul-smelling discharge around the vaginal folds, redness of the vaginal walls, remnants of an old torn hymen, and epithelial cells indicative of sexual activity. She produced the PRC form, medical report, and P3 form. In cross-examination, she stated the findings suggested prior defilement episodes but confirmed redness consistent with recent penetration. Anal tone was normal.
11. PW5 Corporal Oreo Ngelechei recorded the report on 27<sup>th</sup> April 2023 from PW2, who recounted the appellant's actions as described by PW1. He produced PW1's birth certificate.
12. In his sworn defence, the appellant denied the offence. He testified that on 20<sup>th</sup> April 2023 he left home for work at 6:00 am, returned at 10:45 pm, prepared supper, and slept. He was arrested on 26<sup>th</sup> April 2023 at Kibera Police Station. He lived alone near the complainant's family and produced his work identity card.
13. DW2 Patrick Ludochi Kivatse, a colleague, confirmed the appellant reported for duty on 20<sup>th</sup> April 2023 around 7:30 am and left around 4:50 pm, with a 15-minute break around 10:45 - 11:00 am.
14. DW3 Stanley Inonda Indangasi produced an extract of the master roll for 20<sup>th</sup> April 2023 showing the appellant on duty. In cross-examination, discrepancies in names and unfilled sections were noted.
15. DW4 Edith Kayalo Nashiali, the appellant's sister, testified he was at work on the material date. In cross-examination, she stated his alleged actions were wrong.
16. After a full trial, the appellant was convicted and sentenced accordingly.
17. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



18. 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."
19. 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.
20. The prosecution's case rested primarily on the testimony of PW1 a nine-year-old girl at the material time, whose age was conclusively established by her birth certificate produced by PW2, her mother, showing her date of birth as 20<sup>th</sup> October 2013. The ingredient was therefore proved beyond reasonable doubt.
21. PW1 provided a clear and consistent account of the incident on 20<sup>th</sup> April 2023, stating that the appellant lured her into his nearby house under the pretext of assisting with household chores, directed her to bend forward, removed her clothing, and intentionally inserted his penis into her vagina, causing her to cry in pain.
22. She further described consuming a sweet-like substance given by the appellant that induced dizziness, after which he instructed her to bathe at home. This narrative was corroborated by PW3, her sister, who received the immediate complaint and escorted PW1 to the appellant's door, observing his shaken demeanour, and by PW2, who took PW1 for medical examination the following day.
23. The medical evidence adduced by PW4 from Coptic Hospital, including the P3 form and PRC form, revealed redness of the vaginal walls, foul-smelling discharge, remnants of a broken hymen, and epithelial cells indicative of sexual activity, findings consistent with recent penile-vaginal penetration notwithstanding the absence of spermatozoa or acute fresh trauma.
24. The court is satisfied that the essential ingredients of defilement were proved beyond reasonable doubt.
25. Penetration, as defined under section 2 of the Act to include any partial or complete insertion of genital organs, was directly evidenced by PW1's unshaken testimony and medically corroborated, with the redness and discharge aligning with forceful sexual intercourse. The complainant's tender age rendered consent legally irrelevant and the act unlawful, further underscored by her evident distress and the deception employed by the appellant. Intention is manifest from the deliberate sequence of actions. Isolating the child, undressing her, and performing the penetration while providing a potentially stupefying substance to mitigate resistance or recollection.
26. The appellant's raised an alibi defence, asserting he was at work from 6:00 am until 10:45 pm on the material date, supported by DW2 (a colleague) confirming his presence with a short break, DW3 producing a flawed master roll extract with name discrepancies (recording "Stephen Chabaga" instead of "Stephen Nashali" and containing errors and unfilled sections), and DW4 (his sister) attesting to his work routine.
27. However, this alibi was rightly rejected by the trial magistrate as unsubstantiated and implausible, given the inconsistencies in the documentary evidence and the lack of a reliable attendance register. Discrepancies raised in cross-examination, such as PW4's notation of prior defilement incidences



(suggesting a broken hymen from earlier events), the one-day delay in seeking medical attention (explained by PW2 as occurring the morning after), and minor variations in timing (e.g., PW3's return home at 11:00 am coinciding with PW1's post-incident disclosure), do not undermine the core prosecution case.

28. These were minor and did not detract from PW1's credible demeanour, her prompt complaint to PW3, or the medical findings consistent with recent penetration. No evidence of ill-will or motive for fabrication was adduced, and the appellant's identification by PW1 as a familiar neighbour was positive and reliable. The defence failed to create reasonable doubt, and the conviction is upheld.
29. 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.
30. 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 10<sup>TH</sup> DAY OF FEBRUARY 2026**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

