



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okonyo v Republic (Criminal Appeal E151 of 2025)  
[2026] KEHC 2305 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E151 OF 2025  
DR KAVEDZA, J  
FEBRUARY 26, 2026**

**BETWEEN**

**JOSHUA AFUNE OKONYO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 22<sup>nd</sup> October 2025 by Hon. C.M Njagi (PM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. E070 of 2024 Republic vs Joshua Afune Okonyo)*

**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(2) of the *Sexual Offences Act* No. 3 of 2006. He was sentenced to life imprisonment.
2. 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 testified that on 15<sup>th</sup> June 2024, while at her residence with her siblings, the Appellant approached her under the guise of settling a debt owed to her mother. She told the court that the Appellant lured the complainant to his premises, where he initially instructed her to wait. Upon the complainant expressing a desire to depart, the Appellant's conduct turned violent. PW1 recounted that the Appellant restrained her, threw her onto a mattress,



- and produced a knife, issuing a threat against her and her mother to ensure her silence regarding the impending assault.
5. The complainant further detailed that the Appellant forcibly removed her clothing, specifically a black skin-tight garment and a pink dress top. In her evidence, she described the act of penetration in terms indicating the Appellant moved upon her and inserted his genitalia into her vagina. Following the act, the Appellant directed her to dress and leave the premises, departing himself shortly thereafter.
  6. The complainant told "Mama Tom," and subsequently to her mother and the landlady. While the complainant alluded to separate instances of defilement by other individuals on different occasions, the focus of this indictment remains the specific conduct of the Appellant on the material date.
  7. The testimony of PW2, Jentlix Nekesa, corroborates the immediate aftermath of the event. PW2 testified that, having been alerted by her husband, she encountered the minor and received a direct narration of the sexual assault. She further identified the Appellant as a neighbour and noted his attempt to flee the scene when confronted.
  8. Medical evidence was adduced by PW3, Joh Njuguna, a clinician at Nairobi Women's Hospital. His examination revealed clinical indicators consistent with non-consensual penetration, including abnormal redness of the vaginal wall, whitish discharge, and vaginal tears. Although no spermatozoa were detected, PW3 clarified under cross-examination that such an absence is not inconsistent with the commission of the offence.
  9. PW4, Corporal George Muranguri, provided evidence regarding the formal report lodged at Uthiru Police Station and the subsequent transfer to the Gender Unit at Kabete. His testimony served to corroborate the consistency of the complainant's account and the procedural integrity of the investigation. Throughout the proceedings, the Appellant maintained a denial of the charges; however, the prosecution relies upon the nexus between the complainant's direct evidence, the prompt outcry to PW2, and the clinical findings presented by PW3 to establish the Appellant's guilt beyond a reasonable doubt.
  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.
      - (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 her birth certificate in evidence, establishing that she was born on 4<sup>th</sup> February 2013. She was therefore eleven years of age at the time of the alleged offence on or about 15<sup>th</sup> June 2024. The age ingredient of the offence of defilement under section 8(2) 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 the appellant threatened her with a knife if she told anyone what had transpired.
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 she had no injuries, abnormal redness on her vaginal wall, whitish discharge, and tears on her vagina were observed. 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. PW2, her mother, Jentlix Nekesa, confirmed that the appellant was their neighbour whom they met at a construction site.
17. The appellant's defence was that they lived together with PW2 and they later separated due to her drinking habits. He alleges that PW2 sent the child to ask him for lunch money in a bid to set him up. On the material day, he found the child waiting on his door, and when he went to look for change. They were neighbors in his house, alleging that he had slept with the child. He states he was arrested on those allegations, which he denies.
18. During cross-examination, he states that he denies defiling the child and that he knew the child was going to school. He also states that when the minor came to his place he was absent.
19. Upon review, this court concurs. The appellant's account is inconsistent with medical evidence of recent penetration, and PW1's detailed, coherent, and unshaken testimony.
20. The prosecution therefore proved all the essential elements of defilement contrary to section 8(2) of the *Sexual Offences Act* beyond a reasonable doubt. The appellant's defence raises no reasonable doubt. The conviction is affirmed.
21. 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.
22. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

**JUDGMENT DATED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Absent

Mr. Kamau for the Respondent

Karimi Court Assistant.

