



REPUBLIC OF KENYA



KENYA LAW
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**Olemo v Republic (Criminal Appeal E145 of 2025)
[2026] KEHC 2286 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E145 OF 2025
DR KAVEDZA, J
FEBRUARY 26, 2026**

BETWEEN

BRIAN OLEMO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 13th October 2025 by Hon. M. Murage (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E118 of 2024 Republic vs Brian Olemo)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of defilement on the main Count contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006. 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) gave sworn evidence after voir dire examination. She told the court that between September and November 2022, the Appellant, whom she identified as "Baba Sharleen" entered her residence while she was alone. Under the pretext of inquiring after her aunt, the Appellant deactivated the electricity, restrained her hands, and overbore her resistance.



5. PW1 told the court that the Appellant forced her to the ground, removed her clothing, and proceeded to defile her. She further stated that the Appellant obstructed her mouth to prevent screaming and issued threats to ensure her silence. Fearing these reprisals, she did not immediately disclose the assault.
6. MOS, the complainant's mother, testified that she was working as a domestic employee in Limuru during the material period. In November 2022, she observed physical changes in the minor but received no explanation until summoned to the school by "Madam Joyce." It was at this stage that the complainant confessed the Appellant had taken advantage of her solitude to commit the offence. PW3 subsequently facilitated the formal report at Kabete Police Station following the birth of the complainant's son.
7. Gladys Adhiambo, a teacher at [Name Withheld], testified to noticing the minor's physical discomfort and inability to perform routine classroom tasks, such as bending. Upon inquiry, the minor disclosed the cessation of her menstrual cycle for three months. She informed the headteacher and the the minor specifically named the Appellant as the person who had defiled her.
8. John Njuguna, a clinician at Nairobi Women's Hospital, produced medical records pertaining to the minor. His examination, conducted approximately three months post-incident, revealed a broken and healed hymen. Crucially, the complainant tested positive for pregnancy, a condition of which she was previously unaware
9. Police Constable Nancy Gathoni corroborated the testimonies of the previous witnesses and the procedural steps taken during the investigation. Critically, she provided evidence regarding the complainant's age, confirming her date of birth as 6th September 2009.
10. In his defence, the appellant stated that he was arrested and taken to Kabete Police Station and informed of the charged herein. He maintained that PW3, mother to the victim, framed him following a strained relationship. He further asserted no DNA was conducted to ascertain the paternity test.
11. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
12. 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."
13. 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.
14. On the element of age, PW5, PC Nancy Gathoni, and the complainant (PW1) produced birth certificates confirming a date of birth of 6th September 2009. At the material time, the complainant was thirteen years of age. Consequently, the age ingredient under Section 8(3) of the *Sexual Offences Act* has been proved beyond reasonable doubt.
15. Regarding the element of penetration, the court relies upon the clear and detailed testimony of PW1. Pursuant to Section 2 of the *Sexual Offences Act*, penetration is defined by any partial or complete



insertion. PW1 provided a resolute account of the Appellant's forceful entry, the muffling of her screams, and the subsequent act of penile-vaginal penetration. The court observes that her narrative remained unshaken under cross-examination, and her identification of the Appellant who was a neighbour known to her as "Baba Sharleen", was certain and devoid of any possibility of mistaken identity.

16. The Appellant's defence highlights the absence of DNA profiling. However, this court asserts that DNA evidence is not a mathematical prerequisite for a conviction in sexual offence cases. While forensic biology can provide corroboration, it is well-settled law that where the testimony of a complainant is credible, consistent, and supported by circumstantial or medical evidence, the absence of DNA does not create a lacuna in the prosecution's case. The law does not demand scientific certainty where ocular and medical evidence provide moral certainty.
17. In this instance, the direct evidence of PW1 was powerfully corroborated by PW2, John Njuguna. The medical report and P3 form recorded a torn and healed hymen and, significantly, a positive pregnancy test. These clinical findings are inextricably linked to the act of penetration described by the complainant. To suggest that DNA is required to "prove" a fact already established by a subsequent pregnancy and clinical trauma is to impose a burden of proof higher than that required by statute.
18. The court finds the Appellant's account entirely inconsistent with the unchallenged medical evidence and the coherent testimony of the victim. The prosecution has successfully navigated the evidentiary burden, proving all essential elements of defilement. The conviction is hereby affirmed.
19. The appellant was sentenced to serve twenty (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.
20. 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 FEBRUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Kamau for the Respondent

Karimi Court Assistant.

