



**BO v Republic (Criminal Appeal E116 of 2025)  
[2026] KEHC 3373 (KLR) (11 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E116 OF 2025  
DR KAVEDZA, J  
MARCH 11, 2026**

**BETWEEN**

**BO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 24th July 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate’s Court, Sexual Offences Case No. E137 of 2024 Republic vs Brucelee Ongwae)*

**JUDGMENT**

1. The appellant was charged and, after a full trial, convicted by the Subordinate Court of the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* No.3 of 2006. The particulars of the main offence are on the unknown dates of July 2024 at Dagoretti Sub-County within Nairobi County, unlawfully and intentionally caused his genital organ (penis) to penetrate the genital organ (vagina) of MNB a child aged 16 years. He was sentenced to serve 15 years’ imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction. 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 MN testified, after a voir dire examination, that the appellant is her uncle, married to her mother’s sister. She began residing at the appellant’s house in Kabiria in June after arriving from Webuye. In



July, on a night when her aunt had gone to work in Westlands, PW1 was sleeping in the sitting room while the appellant, his wife, and their one-year-old child occupied the bedroom.

5. At about 10.00 p.m., the appellant came to where she slept. Although the lights were off, security lights illuminated the room sufficiently for her to see him clearly. The appellant inserted his penis into her vagina, threatened her, and had sexual intercourse with her. PW1 feared for her life, having known the appellant to be violent. She remained silent out of fear afterwards. She later moved out of the house with her aunt.
6. Some months later, she fell ill and, upon hospital attendance, was found to be pregnant. The matter was reported to the police, and she was referred to Nairobi Women's Hospital where a pregnancy test confirmed she was three months pregnant. PW1 recorded a statement with the police and stated that the appellant was the only person with whom she had had sexual intercourse during the material period and was responsible for the pregnancy.
7. On cross-examination, she denied that the appellant was a pastor, denied being truant or inciting the appellant's stepson against him, and stated that the appellant was violent and beat his stepson mercilessly. She explained that she had not disclosed the incident earlier because she was unaware of the pregnancy and the threats.
8. PW2 EL testified that PW1 is her niece and the appellant is her former husband. On 23<sup>rd</sup> October 2024, PW1 informed her that she had missed her menstrual period. PW2 did not take it seriously initially, but three days later escorted PW1 to a private clinic in Kabiria where a pregnancy test was positive. When asked who was responsible, PW1 named the appellant. PW2 contacted the appellant to explain, but he assaulted her. She reported the matter at Mutuini Police Station, and PW1 was referred to Nairobi Women's Hospital where examination confirmed she was approximately three months pregnant. Statements were recorded, and the appellant was arrested.
9. On cross-examination, PW2 admitted past quarrels with the appellant, including an occasion when he pushed her to the ground, and that she had cautioned him against excessive discipline of the children. She confirmed the appellant was a pastor, which explained her earlier lack of suspicion, and denied fabricating the report to obtain money for an abortion.
10. PW3 John Njuguna, clinician at Nairobi Women's Hospital, produced the medical report. Examination revealed no physical injuries on PW1's body or genitalia; she was approximately 20 weeks pregnant.
11. PW4 PC Omati, the investigating officer at Mutuini Police Station, corroborated PW1's account. He arrested the appellant. On cross-examination, he stated that PW1 feared for her life and reported only after discovering the pregnancy. The appellant sought to settle the matter out of court, but no meeting occurred.
12. The appellant gave evidence in his defence. He testified that a doctor friend informed him PW1 was pregnant, which shocked him. He alleged the charge resulted from fabrications by his former wife (PW2) due to marital disputes. PW2 allegedly gave him three options: face defilement charges, care for PW1's pregnancy and child, or provide money for an abortion. His brother followed up, and PW2 demanded Kshs 17,000 compensation plus signature on divorce papers.
13. DW2 EM, the appellant's brother, testified that he attempted reconciliation between the parties but failed. The appellant denied the offence, while PW2 maintained her position.
14. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



15. 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."
16. Further, section 8(1) and (4) 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.
    - (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
17. On the element of age, the complainant (PW1) produced birth certificate confirming a date of birth of 8<sup>th</sup> March 2008. At the material time, the complainant was sixteen years of age. Consequently, the age ingredient under Section 8(4) of the [Sexual Offences Act](#) has been proved beyond a reasonable doubt.
18. 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 entry having a towel tied to his waist. The lights were off but could identify him by the sufficient security lights. The court observes that her narrative remained unshaken under cross-examination, and her identification of the Appellant, who his uncle, husband to PW2. She was certain and devoid of any possibility of mistaken identity. PW1 as a result became pregnant.
19. 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.
20. Upon careful consideration of the whole evidence, the trial magistrate found PW1's testimony to be credible, detailed, coherent and consistent throughout. It was not shaken on cross-examination. Pursuant to section 124 of the [Evidence Act](#) (Cap. 80), which permits conviction in a sexual offence case on the uncorroborated evidence of the victim alone where the court is satisfied that she is telling the truth (and records reasons for that belief), the magistrate expressly believed PW1 and relied on her evidence. The magistrate rejected the defence case as failing to raise any reasonable doubt. All elements of the offence of defilement contrary to section 8(4) of the [Sexual Offences Act](#) were proved beyond reasonable doubt, and the conviction was proper and is affirmed.
21. The appellant was sentenced to serve fifteen (15) 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.
22. 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 11<sup>TH</sup> MARCH 2026**



**D. KAVEDZA**

**JUDGE**

In the presence of:

