



**Odede v Republic (Criminal Appeal 143 of 2018)
[2026] KECA 623 (KLR) (13 March 2026) (Judgment)**

Neutral citation: [2026] KECA 623 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 143 OF 2018
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
MARCH 13, 2026**

BETWEEN

PETER OCHOLA ODEDE APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the High Court of Kenya at
Migori (Mrima, J.) dated 29th June, 2017, in HCCRA No. 61 of 2016)*

JUDGMENT

1. The appellant, Peter Ochola Odede, faced the charge of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. The particulars of the charge alleged that on the night of 31st March, 2016, at Kosodo Village, within Migori County, the appellant intentionally caused his penis to penetrate the vagina of A. A. O., a child aged 9 years.
2. The appellant was charged, in the alternative, with the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on the same date and place, the appellant intentionally by use of his penis caused it to come in to contact with the vagina of A.A.O, a child aged 9 years.
3. The brief facts of the prosecution's case were as follows: The complainant (PW1), told the court that she lived with her grandmother, but on the material day of 31st March, 2016, her grandmother had gone on a journey. After school, she went to have dinner at her brother's house. She was with her brother, Robert Ouko, his wife, and her younger brothers, Paul and John. The appellant, who was her brother's friend, joined them that evening. After having dinner, they went to sleep. The complainant stated that she slept in the same room with her younger brothers, Paul and John, as well as the appellant. They all slept on a mat. Her brother and his wife slept in the next room. It was her evidence that while they were sleeping, the appellant, who was sleeping next to John, switched positions and moved to sleep



next to her. He removed her panty, covered her mouth with his hand, and threatened to kill her if she made any sound. She stated that he inserted his penis in her vagina and did 'bad manners' to her. It was her evidence that when she woke up the next morning, her mouth, right shoulder and thigh were swollen. The appellant was still sleeping next to her. She left for school. While at school, one of her teachers asked her why she was not walking properly. She informed the teacher what had transpired the previous night.

4. Janet Ababu (PW2) was the teacher who the complainant opened up to. It was her evidence that she was the teacher on duty on 1st April, 2016, at Kosodo Primary School. She stated that as the pupils were running to class, she noticed that the complainant had difficulty walking. She asked the complainant if she was unwell. The complainant broke down in tears. The complainant narrated to her how a man by the name Peter moved to sleep next to her, slept on her thighs, and did 'bad manners' to her. PW2 informed the headteacher. A report of the incident was made at Kamagambo Police Station. They were issued with a P3 form. They took the complainant to Rongo Sub- District Hospital for medical examination.
5. At Rongo Sub-District Hospital, the complainant was examined by PW4, Lilian Nyaboke, a clinical officer at the said hospital. It was her testimony that the complainant's external genitalia was normal; her labia minora had tears; and her hymen was missing. She stated that the complainant's age was assessed by her colleague, Dr. Morris Raute, at nine years at the time. She produced the P3 Form, Post Rape Care Form, treatment notes and age assessment report in evidence.
6. PW3, P.C. Dorah Mado, took over the investigation from Corporal Brigid Asunta, who had gone on transfer. She sought to have Corporal Brigid's statement admitted in evidence under Section 33 of the Evidence Act. According to the said statement, the complainant, who was seen walking with difficulty, revealed that she had been defiled by the appellant. The complainant was taken to the hospital for medical examination and assessment of her age. The appellant was later arrested and charged.
7. In his defence, the appellant stated that on 1st April, 2016, he was asked by someone to go to Opapo area where he was apprehended by members of the public. They escorted him to Rongo Police Station. They did not inform him the reason for his arrest. The appellant stated that on the night of 31st March, 2016, he was at a rental unit with some of his friends with whom he had earlier attended a crusade with. He denied sexually assaulting the complainant.
8. After a full trial, the trial court found that the prosecution had sufficiently established its case with respect to the charge of defilement against the appellant. Upon conviction, the appellant was sentenced to life imprisonment. Dissatisfied by the decision of the trial court, the appellant lodged a first appeal before the High Court of Kenya at Migori.
9. In his petition of appeal, the appellant faulted the trial court: for arriving at a guilty verdict without evidentiary proof; for shifting the burden of proof to the appellant; for basing its findings on hearsay evidence and the evidence of a single witness; and for imposing a sentence that was harsh and excessive.
10. In a Judgment dated 29th June, 2017, the first appellate court saw no reason to disturb the conviction and sentence of the appellant by the trial court.
11. The appellant has now lodged a second appeal before this Court.

He has raised six grounds of appeal challenging the decision of the first appellate court. In summary, the appellant urges that: the prosecution failed to discharge its burden of proof in the case against him; that the proceedings were conducted in a manner that violated his rights as guaranteed by the Constitution; that his defence was not given proper consideration; that his conviction was based on



- extraneous factors; and that the first appellate court erred in upholding the life sentence meted out by the trial court.
12. The appeal was heard by way of written submissions. The appellant appeared in person. He confined his submissions to the question of whether the essential ingredients forming the offence of defilement were proved to the required standard, and whether the sentence of life imprisonment was harsh and excessive. He submitted that the fact that none of the other people who were allegedly in the house on the material night were not availed to give evidence in support of the prosecution's case was detrimental to its case. He contended that it was implausible that the complainant could have been sexually assaulted throughout the night without any disturbance being noticed by the other occupants of the house. He urged that the complainant's evidence was not specific on whether penetration occurred, as she did not speak of any injury to her private parts. He asserted that the medical evidence relating to the absence of the hymen did not prove that penetration occurred on the material night, given the complainant's testimony that she had previously been defiled while in pre-unit class.
 13. The appellant further submitted that the prosecution failed to sufficiently establish the complainant's age, contending that the age assessment report was prepared on the basis of hearsay information supplied by the complainant's mother, who was not called as a witness. He maintained that the two courts below failed to interrogate the circumstances under which the offence was said to have been committed, and further that crucial witnesses who would have placed the appellant at the scene of crime were not availed by the prosecution.
 14. On sentence, it was his submission that the life sentence meted by the trial court was excessive, and that Section 8(2) of the *Sexual Offences Act* is contrary Articles 10 and 73 of *the Constitution*, as it limits the discretionary powers of the court during sentencing.
 15. In rebuttal, Learned Prosecution Counsel, Ms. Ikol, made submissions to the effect that the prosecution proved its case against the appellant beyond any reasonable doubt. She stated that the complainant's age was established by her oral testimony, as well the age assessment report produced by PW4. She submitted that the complainant was very candid about what the appellant did to her in her brother's house, and further that the complainant's evidence on penetration was corroborated by the medical evidence on record, as well as PW2's evidence. She pointed out that PW2, after noticing that the complainant had difficulty in walking, inquired whether she was unwell, and the complainant in response, narrated to her how the appellant had defiled her the previous night.
 16. Ms. Ikol submitted that the appellant was well known to the complainant. She had ample opportunity to observe him as he joined them for supper on the material night, as well as the following morning when she woke up next to him. She served him porridge. She urged that the complainant identified the appellant by name to PW2. On sentence, Ms. Ikol asserted that the life sentence meted by the trial court was sound in law in view of the decision of the Supreme Court in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) (2024) KESC 34 (KLR) (12 July 2024) (judgment)*. She invited us to uphold the appellant's conviction, and affirm his sentence.
 17. This is a second appeal. The mandate of this Court on a second appeal is confined to consideration of matters of law only, unless it is shown that the courts below considered matters they should not have considered, or failed to consider matters they should have considered, or looking at the entire decision, it is perverse. In the case of *Kaingo vs Republic* [1982] KLR 213 at page 219 this Court stated thus:

“A second appeal must be confined to points of law and this Court will not interfere with concurrent findings of fact arrived at in the two courts below unless based on no evidence.



The test to be applied on second appeal is whether there was any evidence on which the trial court found as it did (Reuben Karoti S/O Karanja versus Republic (1956) 17EACA 146).”

18. We have carefully considered the record, the grounds of appeal, and the rival submissions set out above, in light of this Court’s mandate. In our opinion, the following issues of law arise for our determination:
- i. Whether the prosecution established the elements of the offence of defilement, beyond any reasonable doubt;
 - ii. Whether the life sentence imposed on the appellant was harsh and excessive.
1. With respect to the first issue, the prosecution was required to establish three elements forming the offence of defilement namely; the age of the complainant, penetration and positive identification of the perpetrator.
 2. On age of the complainant, it is well established that the age of a complainant in a defilement charge may be proved by a variety of credible means, including oral testimony, age assessment reports or other documentary evidence and, where actual age is not established, apparent age may suffice to place the complainant below eighteen years as required for the offence to be established. In the case of Francis Omuroni vs. Uganda, Court of Appeal Criminal Appeal No. 2 of 2000, the Court observed that:

“In defilement cases medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in absence of any other evidence. Apart from medical evidence age may also be proved by birth certificate, the victim’s parents or guardian and by observation and common sense.”
21. The complainant, in her testimony before the trial court, stated that she was nine (9) years old, and attended class one at Kosodo Primary School. This evidence was corroborated by the age assessment report, prepared by Dr. Morris Raute, and produced in evidence by PW4. The appellant did not challenge the evidence of age during trial, nor did he adduce any contrary evidence to controvert that evidence. We are therefore satisfied that the complainant’s age was established to the required standard of proof beyond any reasonable doubt.
22. The second element is penetration. We adopt the observations made by the Supreme Court of Uganda in the case of Bassita vs. Uganda S. C. Criminal Appeal No. 35 of 1995 with regard to proof of penetration:

“The act of sexual intercourse or penetration may be proved by direct or circumstantial evidence. Usually the sexual intercourse is proved by the victim’s own evidence and corroborated by the medical evidence or other evidence. Though desirable it is not hard and fast rule that the victim’s evidence and medical evidence must always be adduced in every case of defilement to prove sexual intercourse or penetration. Whatever evidence the prosecution may wish to adduce, to prove its case, such evidence must be such that is sufficient to prove the case beyond reasonable doubt.”
23. In the instant case, evidence of penetration emanated from the complainant’s testimony, and was corroborated by the evidence of PW2, as well as medical evidence. The complainant was candid that the appellant inserted his penis in her vagina. Although she used the term ‘bad manners’, there is no doubt that she meant that she had been sexually assaulted by the appellant. This Court takes judicial notice of the usage of the words ‘bad manners’ in the context of the complainant’s age, her limited



language skill at the time and her understanding of the trauma that she endured. ‘bad manners’ in the context can only mean penetration.

24. The complainant told the court that the appellant joined them on the material night at her brother’s house. She slept on a mat, together with her two younger brothers, Paul and John, as well as the appellant. The appellant slept next to John. It was the complainant’s testimony that in the middle of the night, the appellant switched positions and moved next to her. He removed her underwear. He then covered her mouth with his hand and threatened to kill her if she made any sound. She told the court that the appellant ‘inserted his thing for urinating into my private part used for urinating and did bad manners to me’.
25. The following day, PW2, a teacher at the complainant’s school noticed that she had difficulty when walking. When she asked the complainant if she was unwell, the complainant broke down in tears and told her how the appellant had sexually assaulted her the previous night. PW2 took the complainant to the police station, and afterwards to the hospital for medical examination. The medical evidence on record revealed that upon examination, the complainant’s hymen was found to be missing, and her labia minora had tears. The finding of injuries on her labia minora was consistent with and corroborative of the complainant’s testimony on penetration. Taken together, the medical evidence, the evidence of PW2, and the complainant’s account formed cogent, credible, consistent and corroborative evidence which sufficiently proved the element of penetration to the required standard of proof.
26. The appellant was properly identified as the perpetrator by the complainant. The evidence on record showed that he was well known to her, being a friend of her brother. The complainant identified him by name as Peter. Further, upon waking up the following morning, she found the appellant sleeping next to her and later served him with porridge, thereby having ample opportunity to observe and recognize him. In the circumstances, the identification was that of recognition and was free from the possibility of error or mistaken identity.
27. The appellant’s contention that the offence could not have occurred because other occupants of the room did not hear any commotion is diversionary. The complainant testified that the appellant covered her mouth with his hand and threatened to kill her if she made any sound, which adequately explains the absence of disturbance or commotion, given the complainant’s tender age.
28. The appellant’s assertion that the prosecution failed to call crucial witnesses, namely the other occupants of the house, is without merit. Pursuant to Section 143 of the [Evidence Act](#), no particular number of witnesses are required to prove any fact. The prosecution is only obliged to call such witnesses as are sufficient to establish its case. In the present appeal, the evidence tendered by the complainant was clear, consistent and credible, and was corroborated by medical evidence.
29. The proviso to Section 124 of the [Evidence Act](#) was properly invoked in this case. In its Judgment, the trial court expressly noted that the complainant’s testimony was candid and consistent. The Court further observed her demeanour as she testified and found her to be a truthful and credible witness. Having recorded the reasons for believing the complainant, the trial court was entitled to rely on her evidence to found a conviction. The appeal against conviction lacks merit and is hereby dismissed.
30. The last issue relates to the sentence of life sentence imposed upon the appellant by the trial court, and affirmed by the first appellate court. The appellant contends that the same was harsh and excessive, and that it was unconstitutional for limiting the discretionary power of the court during sentencing.
31. The Supreme Court in *R vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* held that statutory minimum sentences under the [Sexual Offences Act](#) do not, of



themselves, contravene the Constitution. The Court drew a clear distinction between mandatory sentences, which wholly deprive courts of sentencing discretion, and minimum sentences, which set only a baseline for punishment while allowing the court to impose a greater sentence based on the specifics of the offence. From the foregoing, it is clear that the sentence of life imprisonment prescribed under Section 8(2) of the Sexual Offences Act remains lawful, constitutional, and binding upon trial courts.

32. In light of the above, we find that the appellant’s challenge to both the conviction and the sentence is without merit and is accordingly dismissed.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF MARCH, 2026.

ASIKE-MAKHANDIA

..... **JUDGE OF APPEAL**

H.A. OMONDI

..... **JUDGE OF APPEAL**

L. KIMARU

..... **JUDGE OF APPEAL**

I certify that this is a true copy of original.

DEPUTY REGISTRAR .

