

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL APPEAL NO. E159 OF 2025**

**DELVIN OCHIENG ODHIAMBO.....**  
**.....APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 27<sup>th</sup> November 2025 by Hon. Kahuya I.M at Kibera Chief Magistrate's Court, Sexual Offences Case No. S.O E122 of 2024 Republic vs Delvin Ochieng Odhiambo)*

**JUDGEMENT**

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(3) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence as per the charge sheet were that on 24<sup>th</sup> September 2024 at around 0700 Hrs at Kibera Bombolulu in Kibra Sub-County within Nairobi County the appellant intentionally caused his penis to penetrate the vagina of E.EA a child aged 15 years. 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. PW2 (E.E.A) testified that the appellant was their family friend living with them. On the material morning, while she sat at the edge of the sofa and the appellant lay watching TV, he suddenly started touching her breasts despite her resistance. He then pushed her onto her mother's nearby bed, pulled down her stockings and underwear, lowered his trousers and inserted his penis into her vagina against. She fought back and pushed him aside. He told her he would buy her anything on her wish list if she did not tell anyone. She disclosed the incident to her cousin PW3, who advised her to keep quiet until he confronted the appellant. The matter was reported at Jamhuri Police Station on 5/10/2024 after a physical confrontation. In cross-examination, she stated she had sought permission to stay home from school while the appellant was a habitual absentee, and she knew of the assault case filed by the appellant against PW3.
5. PW3 (Teddy Ochieng) testified that PW2 disclosed the defilement to him shortly after the incident. He asked her to keep quiet until he confronted the appellant. The confrontation happened weeks later and turned physical. He reported the matter about a week later because he had forgotten. He denied assaulting the appellant's brother and stated he was on the run as a result.
6. PW1 (Clinician Shadrack Yego) testified that he examined PW2 on 5<sup>th</sup> October 2024 at Nairobi Women's Hospital. He recorded a history of penile vaginal sex by a neighbour that occurred in the victim's house. On examination, he observed normal genitalia with

a broken hymen. PW2 was on her menses at the time. In cross-examination, he stated that the hymen was not freshly broken.

7. PW4 (No. 101045 P.C. Ruto) testified that he was assigned investigations after the report at Jamhuri Police Station on 5/10/2024. He issued PW2 with a P3 form and advised her to seek medical attention. He visited the scene but did not secure any bloody clothing. He explained the late reporting was because both PW2 and PW3 were busy. He confirmed the parties knew each other well and stated he conducted credible investigations.
8. In his defence, the appellant gave a sworn evidence. He stated that PW2 was his neighbour. On 5<sup>th</sup> October 2024 he left for school early in the morning for a Chemistry practical examination and returned home at 1 pm. He found his brother being assaulted by PW3. When he intervened, PW3 slapped him. He reported the incident to his father DW3, who confirmed the assault and reported it at Ayany Police Patrol Base. A reconciliation meeting was held, mediated by DW2, during which PW2 alleged the appellant had attempted to defile her. He denied the allegation, stating he was at school that morning. He had no OB extract to prove the assault report but maintained there was no disagreement with PW2 that could motivate fabrication.
9. DW2 (Hannington Osore) testified that both families of the appellant and PW2 were very good friends. He mediated the reconciliation meeting between the families.
10. DW3 (Browton Ajuoga) testified that he rushed to the scene after being informed by the appellant, confirmed the assault on his son by PW3, and reported the matter at Ayany Police Patrol Base. He convened a reconciliation meeting which was mediated by DW2. During the meeting, PW2 alleged that the appellant had attempted

to defile her. He stated that the school attendance register showed the appellant was in school on the material morning, though it did not indicate the time.

11. After a full trial, the appellant is accordingly found guilty as charged.
12. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
13. 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.**"
14. 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.**

15. On the element of age, the complainant, PW2 testified on oath that she was born on 25<sup>th</sup> December 2009, as confirmed by her birth certificate which was produced in evidence. At the time of the alleged incident on 24<sup>th</sup> September 2024, she was 14 years old. The prosecution therefore established beyond reasonable doubt that the complainant was a child under the age of eighteen years, as required by section 8(1) of the Sexual Offences Act.

16. On the element of penetration, PW2 gave clear, direct and cogent evidence in her sworn testimony. She stated that after the appellant pushed her onto the nearby bed belonging to her mother. The appellant then pulled down her stockings and underwear, lowered his trousers, exposed his penis and inserted it into PW2's vagina against her will. PW2 felt the penetration and experienced pain.
17. This direct oral evidence of penetration was materially corroborated by the medical examination conducted at Nairobi Women's Hospital on 5th October 2024. PW1 (Clinician Shadrack Yego) produced the P3 form which recorded a broken hymen consistent with prior penetrative trauma. No alternative explanation for the injury was advanced or supported by the evidence. The trial court was satisfied that penetration was proved beyond reasonable doubt.
18. On the identity of the perpetrator, PW2 was firm, consistent and unshaken in her identification of the appellant as the person who defiled her. She knew him well as their family friend who was living with them while his parents settled him down. She gave a detailed account of the events leading to and including the act of defilement, which occurred in their sitting room and on her mother's bed on the material morning. There was no suggestion of mistaken identity, and her evidence on identification withstood thorough cross-examination. The appellant was positively identified by PW2 as the perpetrator.
19. The appellant, in his defence, gave a sworn statement denying the offence. He asserted that on the material morning of 5th October 2025 he left for school early for a Chemistry practical examination and returned home at 1:00 p.m. He claimed he found

his brother being assaulted by PW3, intervened, and was slapped by PW3. He reported the assault to his father (DW3), who confirmed the incident and reported it at Ayany Police Patrol Base. A reconciliation meeting mediated by DW2 (Hannington Osore) was later held, during which PW2 first alleged the attempted defilement. He was supported by DW2 and DW3, who confirmed the good relationship between the families and the school attendance register showing he was in school that morning. The trial magistrate, however, found the appellant's defence implausible when weighed against the prosecution's evidence.

20. Upon careful consideration of the whole evidence, the trial magistrate found PW2'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 PW2 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(1) of the Sexual Offences Act were proved beyond reasonable doubt, and the conviction was proper and is affirmed.

21. On sentence, the appellant was sentenced to serve (20) years' imprisonment. The record shows that the trial court considered the pre-sentence report, the appellant's mitigation and the fact that he was a first offender before arriving at that sentence. The sentence imposed was legal and I see no reason to interfere.

22. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**Judgement dated and delivered virtually this 15<sup>th</sup> day of April 2026**

**D. KAVEDZA**  
**JUDGE**

**In the presence of:**

Appellant Present

Mr. Mundia for the Appellant

Mr. Mutuma for the Respondent

Karimi Court Assistant.