



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwakunena v Republic (Criminal Appeal E032 of 2024)  
[2026] KEHC 4860 (KLR) (16 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL APPEAL E032 OF 2024  
WM KAGENDO., J  
APRIL 16, 2026**

**BETWEEN**

**SIKUDHANI ABDALLA MWAKUNENA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from original conviction and sentence in SOA case at Mombasa  
CMCR (SO) no E119 of 2021 delivered on 31/8/2023 by Hon R. Orora (PM))*

**JUDGMENT**

1. The Appellant, Sikudhani Abdalla Mwakunena, was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 of the *Sexual Offences Act* of 2006. The particulars of the offence are that on 26/8/2021 at Mkumbi village of Mtongwe location in Likoni sub-county within Mombasa County unlawfully and intentionally caused his penis to penetrate the vagina of A.A a child aged 14 years.
2. He was charged with count II of committing an unnatural offence contrary to section 162 (a) of the *Sexual Offences Act*. The particulars are that on 26/8/2021 at Mkumbi village of Mtongwe Location in Likoni sub-county within Mombasa County unlawfully and intentionally caused his penis to penetrate the anus of A.A a child aged 14 years.
3. The accused person also faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act. The particulars are that on 26/8/2021 at Mkumbi village of Mtongwe Location in Likoni sub-county unlawfully and intentionally touched the vagina of A.A. a child aged 14 years with his penis.
4. The appellant was convicted on the main count and sentenced to serve 15 years' imprisonment.
5. The appellant was not satisfied with the judgement of the trial court and thus sought this appeal.



6. The appellants' grounds of appeal are summarized as follows;
  - i. That the learned trial magistrate erred in law and fact for not realizing that, the accused person was under age 18 years during the commission of the offence.
  - ii. That the learned trial magistrate failed to consider my defense evidence out of any legal basis.

#### **Prosecution's case**

7. PW1 Aisha Abdalla the complainant stated under oath that her birthday is on 24/4/2008 and she is in class 4. She stays with her grandmother and that the appellant is her friend. She said that he is a bodaboda. That on 26/8/2021 she was in her sister's house where she stayed there till late and the accused person carried her home. On their way the appellant told her that he wanted to show her his house which she agreed. She said that upon reaching in his house he locked her up in his bedroom and had sex with her forcefully. She tried to scream but no one heard her.
8. Pw1 said that he removed her clothes and his as well. He then put his penis in his vagina and where she uses to go her long call. The next day he took her to his friend where she spent 2 days. She said that the appellant heard that the police are looking for pw1 thus he sent another boda boda operator who dropped her next to her home. She met her sister who took her home.
9. Pw1 stated that she explained to her grandmother what happened. The next day she was taken to the police and then to the hospital where she was examined. The accused person was arrested.
10. PW2 Mwanahalima Abdalla said that the complainant is her daughter. On 26/8/2021 she came back home at 6pm and asked for Aisha from the other children and they told her that she had gone to her elder sister. She said that it got late and she called pw1's elder sister at 6.30pm who told her that Aisha has already left her place by boda boda ride. Pw2 said that she got worried and called the elder sister for a second time and she informed her that she knows the boda boda operator who took her but she does not where he lives.
11. Pw2 said that she looked for her daughter and found her after 3 days. She said that PW1 told her that boda boda rider called Sikudhani took her to his house and locked her in his bedroom and defiled her, she tried to scream but no one could help her. She said that she was defiled by putting his penis in her vagina and anus. The next day they reported to the police and she was taken to the hospital for examination and it was confirmed that she was defiled.
12. PW3 Stephen Kalai a clinical officer at Likoni sub-county hospital said that on 4/9/2021 the complainant went to his office with allegations of defilement. He said that Pw1 told her that they were in a relationship with the accused person and they have had sex till 29/8/2021. Pw3 said that pw1 told her that on 29/8/2022 the complainant defiled her from he anus. Pw3 examined her and she had a foul smell and vaginal discharge. Pw3 said that her hymen was broken, her anus had fresh laceration. He produced the treatment notes as PEX-2. PRC form as PEX-3 and P3 form as PEX-4. On cross-examination he said that pw1 told her that they started having sex from beginning of Corona.
13. PW4 PC Jaliwa Kazungu said that on 2/9/2021 the complainant came to his office with her grandmother. The grandmother told her that the complainant had been missing from home and when she was traced she said that she was from a man's house. Pw4 sent them to the hospital. On 7/9/2021 using the village elder they traced the accused person. He said that he was in a relationship with the complainant. Pw4 produced a birth certificate as PEX-1.



## Defence case

14. DWI Sikudhani Abdalla Mwakunena the accused person testified under oath that he resides in Mkumbi in Likoni. He is not working and that went to where they collect sand and then he watered the plants. 4 men came to where he was and they arrested him and took him to Likoni Police Station. He said that he does not know Aisha Abdalla.
15. In light of the above and considering the appellant's memorandum of appeal and his submissions on record, the issues for determination before this court are; -
  - i. Whether the appellant was under the age of 18 years during the commission of the offence.
  - ii. Whether the learned trial magistrate failed to consider his defense evidence out of any legal basis

## Analysis and Determination

16. The duty of this court as a first appellate court is well settled in the case of *Okeno v Republic* [1972] EA 32 at 36 where the court held that: -

“....an appellant on a first appeal is entitled to expect the Evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v Rep* [1957] EA 336 and to the appellate court's own decision on the Evidence. The first appellate must itself weigh conflicting evidence and draw its own conclusions. (*Shentilal M. Ruwala v R* [1957] E.A 570. It is not the function of the first appellate court to merely scrutinize the Evidence to see if there was Some evidence to support lower court's findings and conclusions, it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's finding should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing witnesses, See *Peters v Sunday* [1958] E.A 424.”

- i. Whether the accused person was under the age of 18 years during the commission of the offence
    1. The charge sheet on record indicates that the offence took place on 26/8/2021 and the accused person was arrested on 7/9/2021. The said document indicates that as at the time of arrest the accused person was an adult with an apparent age of 19 years. This issue of age 0 was not raised when the accused person was taking his plea. He did not raise it during cross-examination nor did he raise in his defense case or during mitigation. The accused person did not produce a birth certificate or any other document to prove that he was under the age of 18 years during the commission of the offence. I find no merit and this ground of appeal fails.
  - ii. Whether the learned trial magistrate failed to consider his defense evidence out of any legal basis.
18. The lower court judgement states: -

“conclusion



i have considered the submissions by the accused and I must observe that the testimony and the submissions by the defense did not challenge the evidence presented by ”

19. From the record, I have perused the defense raised by the appellant during the trial and I agree with the lower court that the testimony and the submissions by the appellant does not challenge the evidence presented by the prosecution to the court.
20. The upshot is that the appeal lacks merit and the same is dismissed.
21. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF APRIL 2026.**

**WENDY KAGENDO - JUDGE**

IN The Presence

The Appellant In Person Mr Sirima For The State Bebora Court Assistant

Signed By/for:

Hon. Lady Justice Wendy Micheni

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Hon. Lady Justice Wendy Micheni

Mombasa High Court

High Court Criminal Date: 2026-04-16 16:54:49

