



REPUBLIC OF KENYA



KENYA LAW
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**Manoah v Republic (Criminal Appeal 5 of 2024)
[2025] KEHC 467 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 5 OF 2024
DR KAVEDZA, J
JANUARY 28, 2025**

BETWEEN

JEREMIAH MANOAH APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. A. Mwangi (C.M) on 21st December 2023 at Kibera Chief Magistrate's
Court Sexual Offences case no. E096 of 2022 Republic vs Jeremiah Manoah)*

JUDGMENT

1. The applicant was charged and after a full trial convicted for 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 28th September 2022 at [Particulars withheld] Area in Dagoretti Sub-County within Nairobi County intentionally and unlawfully caused his genital organ namely penis to penetrate the female organ vagina of EN a girl aged 13 years. He was sentenced to serve 20 years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He complained that the trial court erred in convicting him on the evidence of a single witness. Finally, the ingredients of the offence charged were not proved beyond reasonable doubt. 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. To succeed in a prosecution for defilement, it must be proven that the accused 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."
5. 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.
6. The prosecution called on four (4) witnesses in support of their case. PW1, the complainant, EN (name withheld) testified that she was a pupil in class 7. On 28th September 2022, she was in the house with her mother when she decided to go to the toilet which was outside the house. There she met the appellant who was a boda boda operator. The appellant pinned her to the wall near the gate in the single rooms' residential apartments. He then lifted her school dress, removed her underwear and tights, and then forcefully his penis into her vagina. He blocked her mouth with his palm and threatened to kill her if she screamed.
7. Upon hearing the gate being opened, the appellant fled the scene. The complainant, visibly distressed and in tears, returned to the house and informed her mother of the appellant's actions. The matter was promptly reported to Muthangari Police Station, and the complainant was referred to Nairobi Women's Hospital, where she underwent medical examination and treatment.
8. During cross-examination, the complainant affirmed that she was familiar with the appellant and could clearly identify him, as the area was sufficiently illuminated by a nearby streetlight and lighting within the premises. She also categorically denied any prior relationship with the appellant. The complainant also testified that it was not the first time he had been defiled, having been previously defiled by an unknown individual.
9. As discussed in the Kenya Judiciary Criminal Procedure Bench Book 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
 - "94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
 95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, Evidence Act). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; *Julius Kiunga M'biritbia v R* High Court at Meru Criminal Appeal No. 111 of 2011).
 96. The evidence of a child, sworn or unsworn, received under section 19 of the Oaths and Statutory Declarations Act is subject to cross-examination pursuant



to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), *CoK*)”

10. The complainant’s testimony did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the child was telling the truth.
11. The trial magistrate observed that the complainant’s testimony was consistent and unwavering. The court found the complainant to be an honest witness, whose evidence remained coherent throughout the proceedings. Furthermore, the appellant did not deny knowing the complainant and even suggested the existence of a relationship between them. The trial court determined that the complainant had no motive to fabricate the incident. Her evidence, subjected to cross-examination, remained credible and consistent. Consequently, the appellant’s identification by recognition was deemed reliable, and the court was satisfied that the appellant was properly identified.
12. On additional corroborating evidence, PW2, the complainant’s mother, testified that on 28/09/2022, the complainant went to the toilet but delayed returning. PW2 found the toilet keys on the door, but PW1 was missing. Later, the complainant, crying, recounted meeting the appellant near a corridor and being defiled by him.
13. PW2 testified that, upon advice from Rhoda Mwangangi, she reported the incident at Gatina Check Point police and was referred to Muthangari Police Station, then Nairobi Women’s Hospital, where PW1 received treatment. PW2 noted discharge in PW1’s private parts and submitted treatment documents to the police, who issued a P3 form. She identified PW1’s birth certificate, confirming her date of birth as 7/8/2009. PW2, knowing the appellant as a boda boda rider and former customer, stated he later sought her forgiveness after his arrest.
14. John Njuguna (PW3) a clinician at Nairobi Women’s testified on behalf of Job Oyero, a clinical officer who examined the complainant on 29th September 2022 but was no longer at the facility. Upon examination, the child was found to be anxious and had no injuries on her body. She had normal outer genitalia and her hymen was torn but not fresh. She was not pregnant and had no STI. He said that she was put on PEP and pregnancy-prevention drugs. He produced as exhibits the child’s duly filled PRC, P3, and GVRC forms.
15. The evidence by the prosecution leaves no doubt that the ingredient of penetration was proved beyond reasonable doubt.
16. PW4 PC Melly Wanjiru narrated that the complainant’s mother reported all that had occurred that day at Muthangari Police Station. The complainant was also asked to recount what had happened.
17. In his defence, the appellant stated that he is a boda boda operator. He claimed that on the material day, he was at home with his sister and performing his usual duties. He alleged he was arrested without being informed of the charges and denied committing the offence, maintaining his innocence. DW2, the appellant’s sister, testified that he is the family’s sole breadwinner. She asserted that she was with the appellant on the material day, insisting he could not have committed the offence.
18. The trial court evaluated the defence and deemed it implausible and unconvincing. Upon careful analysis of the evidence, I have independently reached the same conclusion, finding the defence lacking credibility and failing to cast doubt on the prosecution’s case.
19. On the age of the complainant, the trial court considered the copy of her birth certificate that she produced. The birth certificate indicated that the complainant was born on 7th August 2009. She was



therefore thirteen (13) years at the time of the offence. There is therefore no doubt that the complainant was a child.

20. The upshot of the above analysis is that the prosecution proved their case beyond reasonable doubt. The conviction is hereby affirmed.
21. On sentence, the appellant was sentenced to twenty (20) years imprisonment. During sentencing, the court considered the appellant's mitigation and that he was a first offender before sentencing him. The *Sexual Offences Act* provides for a mandatory minimum sentence of twenty years for the offence the appellant is convicted of. The court sentenced the appellant to the minimum sentence provided under the law.
22. As such, I find that the sentence was proper in light of the supreme court decision in Petition E018 of 2023 *Republic vs Joshua Gichuki Mwangi*. 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 28TH DAY OF JANUARY 2025

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Achode Court Assistant

