



**Madete v Republic (Criminal Appeal E053 of 2024)
[2025] KEHC 2558 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E053 OF 2024
DR KAVEDZA, J
FEBRUARY 25, 2025**

BETWEEN

KEVIN MADETE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 31st October 2024 by Hon. A. Mwangi (CM) at Kibera Chief Magistrate's Court Sexual Offences Case no. 107 of 2019 Republic vs Kevin Madete)

JUDGMENT

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(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on an unknown date in November 2019 in Langata Sub-County within Nairobi County, intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of JAO a child aged 11 years. He was sentenced to life 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 contended that the prosecution case was based on illegally obtained evidence and that the evidence by the prosecution was contradictory and uncorroborated. He urged the court to quash his conviction and set aside the sentence.
 1. 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.



2. On the day in question, JAO, a young girl referred to as PW1, recounted a harrowing ordeal. After a voir dire examination, she gave unsworn testimony, explaining how the appellant sent her friend to fetch her to his house. She arrived around 6:00 p.m. and spotted Ignatius smoking outside. Once inside, the appellant locked the door, ordered her to undress, and declared he wanted her as his girlfriend. When she refused, he forcibly stripped her and sexually assaulted her, penetrating both her anus and vagina with his penis. Afterwards, he released her, and she hurried home, too frightened of a beating to tell her parents.
3. Her father, JOO (PW2), grew suspicious after a neighbour mentioned seeing PW1 leave the appellant's house. On 15th December 2019, the children also told him they heard her crying inside, though he initially brushed it off as a play. Later, when PW1 returned home bleeding from her genitalia, he called his wife, who confirmed the injury. It being late, they waited until morning to take her to Kibera South Health Centre. There, a doctor confirmed severe injuries. They reported the matter to Lang'ata Police Station, where statements were taken, and PRC and P3 forms issued. PW2 produced PW1's vaccine card, showing she was born on 8th March 2008, and pointed out the appellant in court.
4. LAO (PW3), PW1's mother, recalled how, on 16th December 2015, children told her PW1 had been seen entering the appellant's house. When questioned, PW1 denied it, so PW3 disciplined her and sought the local chief's advice. The chief urged a medical check, leading them to Kibera South Health Centre. A nurse found PW1's hymen broken and issued a PRC form. After visiting the chief again, they went to Lang'ata Police Station, where a P3 form was completed. PW3 recognised the appellant in court.
5. PC Jessy Bato (PW4) took up the case on 16th December 2019, when PW2 reported the appellant had locked PW1 in his house. PW4 escorted PW1 to Kibera South Health Centre for examination, securing a P3 form. She recorded statements from PW1 and her parents, then arrested the appellant at Strathmore College, where he worked as a cleaner. An identification parade followed, with PW1 picking him out. PW4 confirmed PW1 was eleven, born on 8th March 2008, and identified him in court.
6. Alice Gori (PW5), a health officer, examined PW1 on 16th December 2019, when she arrived with her mother alleging defilement by a neighbour. PW5 noted vaginal notches, a broken, gaping hymen, and a foul discharge. She treated PW1, sent her to the police, and later filled out a P3 form matching the PRC findings, both produced in court. During cross-examination, PW5 insisted the sexual assault happened in November 2019, when PW1 was eleven.
7. In his defence, the appellant testified that on 18th December 2019, he met the investigating officer in the company of other officers, who told him that one Bernard Wambua had sent her to pick him up. He followed the officers to their vehicle where he was transported to the police station. He found Bernard Wambua at the station, and he informed him that he had been arrested from his house the previous night. DW1 was then arraigned in court and charged. He gave oral submissions, where he stated that the complainant's father did not witness the incident, and her mother's evidence was hearsay.
 1. 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."
 2. Further, section 8(1) and (2) 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.
 - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
12. Bearing in mind the above provisions, I will now analyse the evidence on record to ascertain whether the essential ingredients of the offence preferred against the appellant were established to the required standard of proof. I wish to state at the outset that the importance of proving the age of a victim, proof of penetration, and positive identification of the assailant in sexual offences is paramount.
 13. The trial court relied on a vaccine card produced by the complainant's father (PW2), showing she was born on 8th March 2008, making her 11 at the time of the offence. This confirms that the complainant was a child.
 14. On the element of penetration, PW5, a health officer, testified that the complainant's hymen was broken and her vagina had notches, satisfying this element which corroborated the complainant's evidence that she had been defiled.
 15. On identification, the complainant, her mother, and her father identified the appellant in court. PW4, the investigating officer, confirmed the complainant picked the appellant out in an ID parade, fulfilling this requirement.
 16. In addition, the appellant's defence was deemed implausible by the court and failed to undermine the prosecution's strong evidence. I find the trial court rightly rejected it as a belated attempt to avoid liability.
 17. The appellant argued the prosecution's evidence was contradictory and uncorroborated. However, under section 124 of the *Evidence Act*, corroboration of a child's testimony is not required if the court believes the child is truthful. The trial magistrate found the complainant consistent and unwavering, even under cross-examination.
 18. Furthermore, the appellant, a known neighbour, was recognised by the complainant and identified in the parade. Mistaken identity was therefore improbable. His defence did not displace the prosecution's case. I uphold that he was properly identified and convicted for the offence of defilement.
 19. On sentence, the appellant was sentenced to life imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was the first offender. The court sentenced the appellant to the minimum sentence provided under the law.
 20. As such, I find that the sentence was proper in light of the supreme court decision in Petition E018 of 2023 *Republic v 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 25TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE



In the presence of:

Mr. Mutuma for the respondent

Appellant – present

Achode – court Assistant

