



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mabaya v Republic (Criminal Appeal E025 of 2024)  
[2025] KEHC 3701 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E025 OF 2024  
DR KAVEDZA, J  
MARCH 26, 2025**

**BETWEEN**

**WYCLIFF MUGONYI MABAYA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. Kabuya IM (SPM) on 9th May 2024 at Kibera Chief Magistrate's Court  
Sexual Offences Case no. E024 of 2024 Republic vs Wycliff Mugonyi Ondieki)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted by the Subordinate Court for the offence of defilement contrary to section 8(1) as read with 8(3) of the [Sexual Offences Act](#) No 3 of 2006. He was sentenced to serve 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 learned magistrate erred by disregarding his defence. 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. The prosecution, pursuant to section 34 of the [Evidence Act](#), successfully applied to adopt the proceedings from Kibera MCSO/91/2018 due to the unavailability of the victim and key witnesses after five years. In the primary proceedings, Leila Suleiman (PW1) testified that on 4th November 2018, the victim, escorted by her friend Jailo, reported being raped by the appellant, known as 'Wikie', her



- neighbour. PW1's inquiries at the appellant's home were met with silence until neighbours intervened, discovering the victim's bleeding, which incited mob justice before the appellant was taken to the Chief's office. In cross-examination, she confirmed the timing of the report and denied the appellant was unconscious when moved.
5. Mebo Makhungu (PW3), another neighbour, witnessed a crowd confronting the appellant that evening and observed the victim's bleeding, prompting her to assist in reporting the incident and securing medical care. J.L.S. (PW5), the victim's friend, confirmed the appellant lured the victim into his house during play, after which she emerged injured. Under cross-examination, she affirmed her familiarity with the appellant known as 'Wicky'.
  6. Douglas Keter (PW1), a Government Analyst at the Government Chemist in Nairobi, gave evidence regarding a DNA report dated 17th February 2021. He testified that specimens delivered to his facility revealed the appellant's DNA profile on the victim's high vaginal swab, conclusively linking the appellant to the offence. The report was produced as a prosecution. Under cross-examination, PW1 admitted he lacked details about the doctor who obtained the swab but maintained the integrity of his findings, asserting the uniqueness of DNA profiles.
  7. John Njuguna (PW2), a clinician from Nairobi Women's Hospital, testified about the victim's P3 form, noting scratch marks on her neck, clotted blood on her thighs, and a freshly torn hymen with mild bleeding, indicative of defilement. In cross-examination, he rejected the notion of self-inflicted injuries, highlighting the severity of the trauma, which necessitated hospital admission.
  8. No 77819 PC Ogechi (PW3), the investigating officer from Kilimani Police Station, recounted that on 4th January 2018, the appellant abducted the victim from a playground in Makina, defiled her in his house, and threatened her silence. Her injuries were later discovered, leading to treatment at Nairobi Women's Hospital and the appellant's arrest. In cross-examination, he clarified the re-trial stemmed from a High Court order.
  9. In his defence, the appellant stated that on the material day, he returned home on the evening of the incident, was arrested, and only learned of the charges the following day, which he denied. He maintained the DNA evidence was flawed and alleged the victim fabricated the case, despite no personal animosity.
  10. The appeal was canvassed by way of written submissions. The submissions have been duly considered and there is no need to rehash them.
  11. 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."
  12. Further, section 8(1) 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.
  13. In this case, the victim's age was incontrovertibly established by her birth certificate which was produced. It confirmed that the victim was born on 17th December 2012. Thus, she was six years old at the time of the offence, satisfying this essential legal element.
  14. Regarding penetration, compelling evidence was adduced by the victim's neighbours, Leila Suleiman and Mebo Makhungu, her friend J.L.S., and John Njuguna, a clinician at Nairobi Women's Hospital.



These eyewitnesses, save for the expert, observed blood emanating from the victim's private parts. Njuguna testified that on 4th November 2018, at approximately 6:50 pm, the victim presented with a history of defilement by a neighbour who threatened her silence.

15. Examination revealed neck scratches, clotted thigh blood, blood-stained clothing, vaginal lacerations, and a hymen torn at multiple points, necessitating intensive care. Medical records—GVRC, PRC, and Examination Reports, all dated 4<sup>th</sup> November 2018 corroborated these findings, convincingly proving penetration alongside the witness accounts.
16. The appellant's identity as the perpetrator was firmly established. J.L.S. testified that the appellant summoned the victim into his house, after which she emerged bleeding. Though circumstantial, this evidence, uncontradicted by any alternative explanation, points to the appellant's guilt, given no other person was present. The victim's narrative to her neighbours further reinforced the appellant's identification.
17. Though the victim and her grandmother, SK, were unable to complete their testimony due to emotional distress and logistical failures, forensic evidence provided decisive clarity. Douglas Keter, Government Analyst, confirmed via a report dated 17th December 2021 that DNA from the victim's high vaginal swab matched the appellant's profile, an irrefutable finding. The appellant's defence, commencing only at his arrest and lacking substance, failed to undermine the robust prosecution case, which I find was proved beyond reasonable doubt. In the premises, the appellant's conviction was proper and is upheld.
18. On sentence, the appellant was sentenced to life imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation and issued the minimum sentence provided under the law.
19. In the premises, I see no reason to interfere with the sentence. 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 26<sup>TH</sup> DAY OF MARCH 2025**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Ms. Njoroge for the State

Tonny Court Assistant

