



REPUBLIC OF KENYA



KENYA LAW
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**Muiruri v Republic (Criminal Appeal E093 of 2024)
[2025] KEHC 3649 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E093 OF 2024
DR KAVEDZA, J
MARCH 25, 2025**

BETWEEN

ELIAS KIMANI MUIRURI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 25th July 2024 by Hon. W. Lopokoiyit (SRM) at Kibera Chief Magistrate's Court Sexual Offences Case No. 063 of 2023 Republic v Elias Kimani Muiruri)

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(3) of the Sexual Offences Act No. 3 of 2006 (herein the Act). 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. The prosecution availed six (6) witnesses in support of their case. PW1 the complainant herein gave sworn evidence. She stated that she was born on 21st October 2008. She recounted that in 2023, she met the appellant and became friends romantically. She told the court that she did not want to go to school as the appellant had proposed marriage. That they had had sex on several occasions. At one time, she stayed with him for 3 days. Her parents did not consent to their relationship. The matter was reported



to the police and she was taken for examination at the hospital. The appellant was later arrested. She maintained she wanted to be married by the appellant.

5. The complainant's mother PW2 narrated how the complainant disappeared from home and in the company of her husband PW3 they reported the matter to the police. She was later found in Oloitoktok in the company of the appellant. She identified the appellant in court.
6. PW5 Antony Munguti a clinical officer examined the complainant on 13th May 2023. She had no physical injuries; her hymen was broken with bruising on the left and right labia minora. He produced the PRC and P3 forms.
7. In his defence, the appellant testified that from 8th to 12th May 2023, he went to work as usual. He came home and found the complaint in his home in the company of his grandmother. The complainant indicated that she did not want to go to school and wanted to be married. They stayed for 4 days until the police arrested them. On cross-examination, he confirmed that he knew the complainant was a minor. He denied committing the offence.
8. 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."
9. Further, section 8(1) and (3) of the [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 between twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
10. In this matter, the critical element of penetration was comprehensively established through cogent and compelling evidence. Primarily, the complainant's testimony provided a clear and detailed account of more than one incident between herself and the appellant. This was further substantiated by medical evidence adduced by PW5, the medical officer. PW4 tendered the complainant's Post Rape Care (PRC) form, accompanied by medical records that disclosed the presence of bruising on her labia minora and a broken hymen. This clinical finding unequivocally corroborated the complainant's assertion of penetration, lending significant weight to his narrative of the events that transpired. The convergence of testimonial and medical evidence thus sufficiently satisfied this essential ingredient of the offence.
11. Further, the age of the complainant was a pivotal factor in these proceedings, and it was meticulously addressed. PW6, the investigating officer, produced the complainant's birth certificate which confirmed that she was born on 21st October 2008. This confirmed that the complainant was fifteen (15) years old at the time of the offence thereby fulfilling another requisite element of the charge.
12. The identity of the appellant as the perpetrator was established beyond a reasonable doubt. The complainant, having known the appellant for over two years and having engaged in sexual intercourse with him, was very familiar to him. She even described him as her boyfriend and wanted to be married to him. His identification was therefore by recognition.



13. In light of the foregoing analysis, it is abundantly clear that the prosecution discharged its burden of proof to the requisite standard beyond reasonable doubt. The evidence presented comprising the complainant's testimony, corroborative medical records, the birth certificate, and the unequivocal identification of the appellant formed a cohesive and unassailable case. Accordingly, the conviction stands affirmed.
14. On sentence, the appellant was sentenced to serve twenty (20) years imprisonment. During sentencing, the court considered the appellant's mitigation, and the pre-sentence report and meted the minimum sentence provided in law. In the premises, I see no reason to interfere with the sentence.
15. 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 MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:-

Elias Kimani Muiruri

Mutuma for the Respondent

Tonny Court Assistant

