



**Muisio v Republic (Criminal Appeal 156 of 2023)  
[2025] KEHC 4932 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4932 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 156 OF 2023**

**DR KAVEDZA, J  
APRIL 28, 2025**

**BETWEEN**

**DENIS MUISIO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. Kamau (S.R.M) on 14th March 2019 at Kibera Chief Magistrate's  
Court Sexual Offences Case no. 505 of 2016 Republic vs Denis Muisio)*

**JUDGMENT**

1. The appellant was charged with the offence of attempted defilement contrary to section 9(1) as read with section 9(2) of the *Sexual Offences Act*, No. 3 of 2006. The particulars are that on 17<sup>th</sup> of January 2016 in Riruta within Nairobi County, the appellant unlawfully and intentionally attempted to cause his penis to penetrate the vagina of IB a child aged 16 years. He was sentenced to serve fifteen (15) years imprisonment.
2. Aggrieved, he filed the present 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 contended that the trial court unduly disregarded his submissions. 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 called six (6) witnesses in support of their case. PW1, IB, after voir dire, testified that the appellant lured her into his house, forcibly undressed her, and penetrated her vagina with his



- penis. Her screams drew the attention of neighbours, yet the appellant persisted until he opened the door, dismissing their inquiries. PW1's mother (PW2) arrived, alerted the police, and the appellant was arrested. PW1 identified him in court.
5. PW2, JK, corroborated PW1's account, noting her daughter's genitalia appeared red, wet, and bruised. She confirmed PW1's birth on 5th July 1999 via a notification of birth, establishing PW1's age as 22, and noted her mental illness and non-attendance at school.
  6. PW3, Peter Wanyama, a clinician, produced PW1's post-rape care form, documenting blood and labial bruises, corroborated by PW5, Dr. Kizi Shako, a police surgeon. He noted that the complainant's hymen was intact. PW4, PC Albanas Mang'eli, reported the incident at Dagoretti Ng'ando Post at 9:00 AM, leading to the appellant's arrest. PW6, PC Glory Kaimenyi, recorded his statement. Both officers identified the appellant in court.
  7. In his defence, denied the charge, claiming fabrication due to a debt owed to PW2.
  8. The issue for determination was whether the prosecution proved their case beyond reasonable doubt and whether the conviction was proper. Section 9(1) and (2) of the [Sexual Offences Act](#) of 2006 provides that;
    - (1) A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.
    - (2) A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.
  9. The complainant averred that the appellant forcefully inserted his penis into her vagina. This was affirmed by her mother PW2 who observed that her genitalia was red, wet, and bruised, as well as PW3 and PW4 the medical practitioner whose testimonies indicated the presence of bruised labia and blood on her genitalia. The complainant's hymen was still intact at the time of examination. The evidence adduced by the prosecution points out that the actions of the appellant were an attempt to penetrate the complainant.
  10. The element of identification was well settled since the complainant and the two arresting officers PW4 and PW6 identified the appellant in court.
  11. The age of the complainant was well established, firstly by her testimony and secondly by her notification of birth duly brought to court by her mother. It indicated that she was born on 5<sup>th</sup> July 1999. She was indeed 17 years old at the time of the ordeal and was therefore a child within the meaning of the law.
  12. I have already found above that the complainant's testimony was truthful and consistent all through. When weighed against the prosecution case, the appellant's defence did not raise any doubts thereof and it was rightly dismissed by the trial court.
  13. In view of the foregoing, it is my view that the elements proved satisfy the ingredients of the offence of attempted defilement.
  14. Upon conviction, the appellant was sentenced to serve fifteen (15) years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and the fact that he was a first offender. The court exercised discretion and sentenced him accordingly. The sentence imposed was lawful and I see no reason to interfere.
  15. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.



Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mr. Chebii for the Respondent

Tonny Court Assistant

