



REPUBLIC OF KENYA



**KENYA LAW**  
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**Adembesa v Republic (Criminal Appeal E154 of 2024)  
[2025] KEHC 6952 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E154 OF 2024  
DR KAVEDZA, J  
MAY 27, 2025**

**BETWEEN**

**JAMES KISAMBO ADEMBESA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
13th April 2024 by Hon. S. Temu (SPM) at Kibera Chief Magistrate's Court  
Sexual Offences Case No. E086 of 2024 Republic vs James Kisambo Adembesa)*

**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. The particulars are that on the 25<sup>th</sup> day of June 2024 in Dagoretti Sub-county within Nairobi County the appellant intentionally and unlawfully caused his penis to penetrate the vagina of FMM a child aged 13 years. He was sentenced to serve twenty (20) years imprisonment.
2. Being aggrieved, he filed an appeal challenging the totality of the prosecution's evidence against which he was convicted. He contended that the trial magistrate disregarded his defense.
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 five witnesses to support their case. PW1, FMM, the complainant, gave sworn testimony following a voir dire examination. She stated that on the date in question, the appellant, a neighbour, approached her from behind, gagged her mouth, and forcibly took her into his house. He bound her hands and mouth, briefly left the premises, and upon returning, ordered her to lie on his



- bed under threat of death. He then removed her clothing and sexually assaulted her by penetrating her with his genital organ.
5. When it began to rain, he ceased the assault and went outside. During this time, PW4, AJ, the complainant's mother, inquired if he had seen her daughter, which he denied. Subsequently, neighbours observed the appellant expelling the complainant from his house and reported the incident to PW3, Fatuma Chelangat, a community volunteer acquainted with the appellant.
  6. PW3 accompanied the complainant to Muthangari Police Station and Coptic Hospital, where she received medical treatment. PW2, Edith Kerubo, a nurse at Coptic Hospital, submitted the complainant's PRC and P3 forms, noting that the complainant appeared frightened and was initially unable to speak. Medical examination revealed a broken hymen, redness, swelling, and lacerations in her vaginal area.
  7. PW4, the complainant's mother, produced the complainant's immunisation card in court, confirming her date of birth as 19<sup>th</sup> July 2011. PW5, PC Mary Wanjiru, recorded the complainant's statement and visited the crime scene. She identified the appellant in court.
  8. In his defence, the appellant denied the offence, asserting that he was at work at the material time.
  9. 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."
  10. 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.
  11. On the ingredients of the offence charged, the prosecution's evidence conclusively established the element of penetration. The complainant, FMM, consistently testified that the appellant, a neighbour known to her, penetrated her vagina with his penis. This was corroborated by PW2, Edith Kerubo, a nurse at Coptic Hospital, whose medical report confirmed the complainant's hymen was broken, with her vaginal area exhibiting redness, swelling, and lacerations, providing compelling evidence of the sexual assault.
  12. The complainant's age is undisputed. Her testimony, supported by her mother, AJ (PW1), and the investigating officer, PC Mary Wanjiru (PW4), confirms she was born on 13<sup>th</sup> March 2011. At the time of the incident, she was 12 years old, thus qualifying as a child under the law.
  13. The appellant was positively identified by the complainant and PW5, PC Mary Wanjiru, in court. Neighbours, including PW3, Fatuma Chelangat, a community volunteer familiar with the appellant, witnessed him expelling the complainant from his house, further linking him to the offence. Based on the foregoing analysis, the appellant's conviction elements of the offence were proved beyond reasonable doubt. The appellant's conviction is upheld.
  14. The appellant was sentenced to serve twenty-five (25) years imprisonment. During sentencing, the court considered the appellant's mitigation, the pre-sentence report, and the aggravating circumstances



surrounding this case and exercised discretion. Statutory provisions dictate that where a minor between the age of twelve and fifteen years suffers defilement, the minimum sentence imposed on the perpetrator is twenty (20) years. Based on this premise, 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 27<sup>TH</sup> DAY OF MAY 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

