



**Kibiso alias Japolo v Republic (Criminal Appeal E074 of 2024)
[2025] KEHC 7057 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E074 OF 2024
DR KAVEDZA, J
MAY 27, 2025**

BETWEEN

JOSEPH KIBISO ALIAS JAPOLO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
28th July 2023 by Hon. C. Mwaniki (PM) at Kibera Chief Magistrate's Court
Sexual Offences Case No. 67 of 2019 Republic vs Joseph Kibiso Alias Japolo)*

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of attempted defilement contrary to section 9(1) as read with 9(2) of the *Sexual Offences Act* No. 3 of 2006. The particulars are that on diverse dates between the 1st day of January 2019 to the 18th of July 2019 at [Particulars Withheld] in [Particulars Withheld] Sub-county within Nairobi County, the appellant intentionally and unlawfully attempted to cause his penis to penetrate the vagina of MA a child aged 8 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, stating that his rights to fair trial and legal representation were undermined.
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 (5) witnesses in support of their case. PW1, MA the complainant gave sworn testimony following a voir dire examination. She averred that on the material day, she was waiting for her brother to come back from school to unlock their house when the appellant who was their



neighbour dragged her into his house and proceeded to take both of their clothes off. He then inserted his genitalia into hers and afterwards went back into their house.

5. As discussed in the [Kenya Judiciary Criminal Procedure Bench Book](#) 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:

“ 94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).

95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, [Evidence Act](#)). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; *Julius Kiunga M'birithia v R* High Court at Meru Criminal Appeal No. 111 of 2011).

96. The evidence of a child, sworn or unsworn, received under section 19 of the [Oaths and Statutory Declarations Act](#) is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), [CoK](#)”

6. The complainant's testimony did not require corroboration in accordance with the proviso to section 124 of the [Evidence Act](#) (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the child was telling the truth. In this regard, the trial magistrate noted that the complainant was consistent and steadfast in her testimony.
7. Nevertheless, her testimony was corroborated by PW2, MAO who was her mother. She noticed that the complainant had soiled herself, and as she gave her a bath, the complainant stated that she felt pain in her private parts, and upon further inquiry explained what the appellant had done to her, and that he was fond of doing so. PW2 proceeded to confront the appellant, and later head to the Chief's office. The Chief referred her to [Particulars Withheld] Police Station where she and her daughter recorded a statement.
8. She produced a copy of the complainant's birth certificate indicating that she was born on 6th May 2011. She first took her to [Particulars Withheld] Health Centre where she was examined by PW3, AG who observed; severe pain in her genitalia, an intact hymen painful on touch, and fungal infection on her chest and abdomen area.
9. PW4, TWN a gender case worker housed the complainant in a safe house and afterwards to [Particulars Withheld] Hospital where she was examined a second time. She identified the appellant in court since he had visited the Shofco office where she worked.
10. PW5, PC Doreen Wakhungu recorded the statements of the complainant and her mother, after which the appellant was arrested and taken to [Particulars Withheld] Police Station. Further, she adduced the complainant's birth certificate indicating that she was born on 6th May 2011.
11. At the close of the prosecution case, the trial court was satisfied that a prima facie case had been established. When placed on his defence, the appellant outrightly denied committing the offence.



12. In analysing the evidence proffered, this Court takes into account the law, where 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.
13. The complainant averred that the appellant forcefully inserted his penis into her vagina, causing her pain. This was corroborated by the complainant's mother PW2 who noticed that her daughter felt pain in her genitalia. Additionally, PW3 a nursing officer observed that her hymen was intact although it was painful to touch. Thus, the evidence by the prosecution unequivocally points out that his actions were an attempt to penetrate the complainant's vagina.
14. The element of identification is well settled since the complainant, her mother PW2, the gender case worker PW4, and the investigating officer PW4 all identified him in court.
15. The age of the complainant is certain. Her birth certificate as adduced by PW5, as well as the evidence by her mother PW2, point out that the complainant was born on 6th May 2011. She was indeed 8 years old at the time of the ordeal and was therefore a child within the meaning of the law.
16. The upshot of the analysis above is that the appellant's conviction is upheld.
17. With regard to the sentence, the appellant was sentenced to twenty (20) 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. Based on this premise, I see no reason to interfere with the sentence.
18. 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 27TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant present

Mutuma for the Respondent

Tonny Court Assistant.

