



REPUBLIC OF KENYA



KENYA LAW
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**Kilaka v Republic (Criminal Appeal E130 of 2024)
[2025] KEHC 7376 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E130 OF 2024**

DR KAVEDZA, J

MAY 27, 2025

BETWEEN

EMMANUEL KILAKA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
5th September 2021 by Hon. Mutua (SRM) at Kibera Chief Magistrate's
Court Sexual Offences Case No. 104 of 2019 Republic vs Emmanuel Kilaka)*

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 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 urged the court to quash his conviction and set aside the sentence imposed.
3. 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."
4. 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 aged between twelve and fifteen years or less shall upon conviction be sentenced to not less than twenty years imprisonment.

5. 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 conclusions on that evidence without overlooking the conclusions of the trial court, but bearing in mind that it never saw the witnesses testify.
6. The prosecution's case was as follows: On 12th November 2019, the complainant, a 13-year-old born on 10th October 2007, accompanied her aunt from Kibra to Kawangware. After her aunt boarded a vehicle, the complainant met Elizabeth, the appellant's sister, who led her to the appellant's residence in Kawangware, Soko Mjinga, near Sewage. Elizabeth encouraged the complainant to befriend the appellant. From 12th November to 6th December 2019, the appellant allegedly touched the complainant's private parts and engaged in sexual intercourse with her.
7. The appellant reportedly confined the complainant in his house, locking her in during the day, providing food in the evenings, and instructing her to return to him if her parents involved the police or hospital. On 19th November 2019, the complainant returned home, and her mother, PW2 (JN), took her to Kilimani Police Station and Nairobi Women's Hospital for examination. The complainant absconded from the hospital and returned to the appellant's residence until 6th December 2019, when JN located her there. JN confronted the appellant, who brandished a knife, injuring her left hand, while attempting to prevent the complainant's escape. The complainant fled but was later apprehended.
8. The appellant was arrested, taken to Muthangari Police Station, then transferred to Kilimani Police Station. The complainant's birth certificate confirmed her age, and medical examination at Nairobi Women's Hospital revealed a healed, broken hymen, indicating prior defilement. The complainant initially alleged defilement by the appellant and his uncle but later stated only the appellant was responsible.
9. The appeal was canvassed by way of written submissions which have been duly considered. The case against the appellant for the offence of defilement under Section 8(1) and (3) of the *Sexual Offences Act*, hinges on three key elements: the complainant's age, penetration, and the identity of the perpetrator.
10. The complainant was 13 years old at the time of the alleged offence, as evidenced by her Birth Certificate confirming her date of birth as 10th October 2007. This satisfies the requirement that the victim be a child under 18, specifically within the 12–15 age bracket for Section 8(3), which carries a penalty of imprisonment for not less than 20 years.
11. The complainant testified that the appellant touched her private parts and engaged in sexual intercourse with her from 12th November to 6th December 2019. Medical evidence from the PRC and P3 Forms produced by PW3, a clinical officer, confirmed a healed, broken hymen, indicating prior penetration, consistent with defilement.
12. The complainant identified the appellant as the perpetrator, stating he confined her in his Kawangware residence and committed the acts. Her mother (PW2) corroborated this, finding her at the appellant's house on 6th December 2019, where he attempted to flee and threatened her with a knife.
13. The trial court thoroughly evaluated the appellant's defence and found it to be unconvincing, as it lacked supporting evidence and failed to account for the detailed and corroborated testimonies of the complainants and supporting witnesses. The medical evidence further undermined the appellant's claims, as it provided objective confirmation of the complainants' accounts.



14. Having considered the totality of the prosecution's evidence, the court found that the case was proven beyond reasonable doubt. Accordingly, the trial court's conviction of the appellant for defilement was proper and is hereby affirmed.
15. The appellant was sentenced to serve twenty (20) years' imprisonment. During sentencing, the court considered the appellant's mitigation, 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. I however note that the trial court did not consider the time spent in remand custody.
16. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety. However, the sentence imposed shall run from 8th December 2019 the date of his arrest pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya.

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

