



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omuya v Republic (Criminal Appeal E072 of 2024)  
[2025] KEHC 6982 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6982 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E072 OF 2024**

**DR KAVEDZA, J**

**MAY 27, 2025**

**BETWEEN**

**PHILLIP OМУYA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
31st January 2020 by Hon. P. Ombewa (PM) at Kibera Chief Magistrate's  
Court Sexual Offences Case No. 73 of 2018 Republic vs Phillip Omuya)*

**JUDGMENT**

1. The appellant was charged and, after a full trial, convicted by the Subordinate Court of two counts of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006. He was sentenced to serve twenty (20) years' imprisonment on each count to run concurrently.
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 court erred in relying on the evidence of a single witness. 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 () 2 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.



(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

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. PW.1, a minor, gave sworn evidence following a voir dire examination to establish her competence to testify. She stated that on the material date, the appellant removed her clothing and inserted his penis into her vagina. Medical evidence adduced by PW.4, a medical practitioner, corroborated her account, revealing vaginal hyperemia, bruises, colourless discharge, and the presence of bacterial cells. These findings, documented in the Post-Rape Care (PRC) form, were consistent with defilement.
7. PW.5, also a minor, provided sworn evidence after a voir dire examination. She testified that the appellant defiled her in the presence of PW.1. Medical examination conducted by PW.4 confirmed a vaginal tear and a broken hymen, findings consistent with defilement and supported by a PRC form. Her testimony aligned closely with that of PW.1, reinforcing the prosecution's case.
8. PW.2, the mother of PW.1, testified that she observed her daughter walking abnormally and initially complaining of a stomach ache. Upon further inquiry, PW.1 disclosed the appellant's actions. PW.2 identified the appellant as "Guka," the caretaker of the premises where the incident occurred. Similarly, PW.3, the mother of PW.5, confirmed that her daughter disclosed being defiled by the appellant, whom she also knew as "Guka." The consistency of these accounts strengthened the prosecution's narrative.
9. PW.4, the medical practitioner, provided expert evidence, verifying the physical injuries sustained by both PW.1 and PW.5. The medical findings, supported by PRC forms, were unequivocal in establishing trauma consistent with defilement, lending significant weight to the complainants' testimonies.
10. In his defence, the appellant denied the allegations, contending that they were fabricated by the complainants' parents due to disputes over unpaid rent. He claimed that he had issued ultimatums for rent arrears and that his arrest coincided suspiciously with the payment deadline. The trial court considered this defence but found it lacked merit, noting that it failed to undermine the cogent and consistent evidence presented by the prosecution.
11. From the evidence on record, the element of penetration, a critical component of the offence of defilement, was sufficiently established. Both PW.1 and PW.5 provided clear, unshaken testimonies during cross-examination, stating that the appellant inserted his penis into their vaginas while their parents were absent. Despite their tender years, their accounts were consistent and corroborated by medical evidence, which detailed specific injuries indicative of sexual assault. The court found no discrepancies in their testimonies to warrant doubt.
12. The ages of the complainants were conclusively proven through documentary evidence. PW.1's birth notification indicated she was born on 21<sup>st</sup> October 2014, and PW.5's birth notification confirmed her birth on 18<sup>th</sup> March 2014. At the time of the incident in 2018, both were five years old, falling within the legal definition of a child under the relevant statute. This satisfied the age element required for the offence of defilement.
13. The identification of the appellant was beyond dispute. Both complainants identified him as "Guka," their caretaker, a person well-known to them. This recognition-based identification eliminated any



possibility of mistaken identity. The court noted that the familiarity between the complainants and the appellant, coupled with their consistent identification, left no room for error.

14. The trial court thoroughly evaluated the appellant's defence of fabrication due to rent disputes. It found the defence 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.
15. Having considered the totality of the prosecution's evidence, the court found that the case was proven beyond reasonable doubt. The testimonies of PW.1 and PW.5 were consistent, credible, and supported by medical evidence. The ages of the complainants were undisputed, and the identification of the appellant was unequivocal. The appellant's defence was dismissed as baseless. Accordingly, the trial court's conviction of the appellant on both counts of defilement was proper and is hereby affirmed.
16. The appellant was sentenced to twenty (20) years' imprisonment on each count. During sentencing, the court considered 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.
17. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

**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

