



REPUBLIC OF KENYA



KENYA LAW
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**Adila v Republic (Criminal Appeal E011 of 2025)
[2025] KEHC 9281 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E011 OF 2025
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

SAMMY ABABU ADILA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 22nd February 2024 by Hon. C.M Njagi (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. 90 of 2019 Republic vs Sammy Ababu Adila)

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 diverse dates between August 2019 and the 11th day of October 2019 at Kawangware stage 46 area in Dagoretti Sub-County within Nairobi County, intentionally, and unlawfully caused his penis to penetrate the vagina of BWW a girl aged 12 years old. He was sentenced to serve twenty (20) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. The appellant filed submissions in which he contended that the totality of the prosecution's evidence against which he was convicted was riddled with inconsistencies. 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 availed four (4) witnesses in support of their case. PW1, EW, following a voir dire examination, testified that the appellant in August of 2019 called her into his house, forcefully took off her clothes, and inserted his penis into her vagina. He then gave her a cloth so that she may wipe herself off, and threatened to kill her if she revealed the incident to anyone. The complainant disclosed to her mother, PW2, Esther Wanjiru Wairimu, that the appellant had summoned her to his house for sexual intercourse on three occasions. PW2 testified that she took the complainant to Nairobi Women's Hospital.
5. PW3, John Njuguna, produced the P3 and PRC forms, which recorded normal external genitalia but noted old hymenal tears, indicating prior vaginal penetration.
6. PW4, PC Nelly Wanjiru, received the report from PW2 and conducted an age assessment, confirming the complainant was 11 years old. The appellant was subsequently arrested and detained at Muthangari Police Station.
7. At the close of the prosecution's case, the trial court found a prima facie case established, requiring the appellant to present his defence. The appellant denied the offence, alleging that PW2 demanded Kshs. 20,000 and Kshs. 50,000 to withdraw the case.
8. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
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. The prosecution's evidence established the element of penetration. PW1, the complainant, detailed the appellant's actions, stating he inserted his penis into her vagina on three occasions and threatened her life to ensure her silence. PW5, a clinician, corroborated this, noting old hymenal tears on the complainant's P3 and PRC forms, confirming vaginal penetration.
12. The complainant's age was undisputed. PW2, her mother, testified she was born in 2007, and PW3, the investigating officer, produced an age assessment report confirming the complainant was approximately 11 years old at the time of the incident. The trial court thus found her to be a child under the law.
13. The appellant's identity was established. Both PW1 and PW2, familiar with the appellant as "Sam," identified him in court.
14. The evidence satisfied the elements of penetration, the complainant's minority, and the appellant's identity, supporting the conviction. The appellant was sentenced to 20 years' imprisonment. The court considered his mitigation, time in custody, and status as a first-time offender. The sentence is proper and I see no reason to interfere.



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 30TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

