



**Anganya v Republic (Criminal Appeal E122 of 2024)
[2025] KEHC 9363 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E122 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

GEOFFREY MAKABE ANGANYA ALIAS UNCLE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. Kabuya I.M (S.R.M) on 17TH October 2024 at Kibera Chief Magistrate’s Court Sexual Offence Case No. E.004 of 2021 Republic vs Geoffrey Makabe Anganya)

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 were that on diverse Kibera DC in Kibra Sub-County within Nairobi county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of M.M.L a child aged 14 years. He was sentenced to serve twenty (30) years’ imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. He contended that the prosecution failed to prove beyond reasonable doubt the elements of defilement, and the evidence on record was full of inconsistencies and contradictions. He also complained that the sentence imposed was excessive. 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 called five witnesses. PW1, SM, the victim’s mother, testified that on 21st November 2021, her daughter, M.M.L., aged 14, appeared unwell. Suspecting pregnancy, PW1 had her tested,



confirming a six-month pregnancy. M.M.I. identified the appellant, known as Baba Shanice, a neighbour of ten years, as responsible. PW1 produced M.M.I.'s birth certificate. On cross-examination, PW1 stated she learned of the pregnancy on 2nd February 2021, stemming from an incident in August 2020 while she was at work. M.M.I. remained silent due to fear. The appellant, a family friend who tutored M.M.I. in 2014, was trusted as a guardian.

5. PW2, M.M.I., gave sworn testimony after voir dire, confirming she was 14 in 2020. She stated the appellant, a neighbour, defiled her on a mattress while her mother was absent, during a fumigation exercise. She reported the incident on 3rd January 2021 after her father suspected pregnancy. She gave birth via cesarean section. On cross-examination, she noted she did not scream, fearing repercussions, and clarified her clothing differed from police records.
6. PW3, a clinician from Nairobi Women's Hospital, presented M.M.I.'s medical records, showing a 16-week pregnancy and broken hymen from an August 2020 defilement by a family friend. PW4, Pamela Akello, a government analyst, confirmed the appellant as the biological father of M.M.I.'s child through DNA analysis. PW5, PC Robinna from Kilimani Police Station, investigated the case, obtained M.M.I.'s birth certificate, and confirmed the appellant's arrest and the child's birth on 6 April 2021.
7. The court found a prima facie case established. The appellant, in his defence, admitted fumigating PW1's house but claimed adults were present. He denied the offence, alleging PW1 fabricated the case after he rejected her advances. On cross-examination, he disputed the DNA results' accuracy.
8. To succeed in a prosecution for defilement, it must be proven that the appellant 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."
9. 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.
10. The offence of defilement under Section 8 of the [Sexual Offences Act](#), No. 3 of 2006, requires the prosecution to prove three essential elements: the complainant's age, penetration, and the identity of the perpetrator, each established beyond reasonable doubt.
11. The age of the complainant must fall within the statutory definition of a child, typically under 18 years, with penalties varying by age bracket. In this case, PW1's mother produced a birth certificate confirming that PW1 was born on 26th December 2009, making her 14 years old at the time of the offence in August 2020. This evidence, unchallenged, unequivocally establishes PW1 as a child under the law, satisfying the age requirement for defilement.
12. Penetration, a critical element, must be proven to have occurred. PW1 testified that the appellant defiled her on a mattress in her home during a fumigation exercise. Medical evidence from Nairobi Women's Hospital, presented by PW3, documented a broken hymen and a 16-week pregnancy, corroborating PW1's account. These findings confirm penetration beyond reasonable doubt.



13. The perpetrator's identity must be established. PW1 identified the appellant, known to her as Baba Shanice, as a family friend who tutored her and her brother since 2014. PW1's mother confirmed their decade-long acquaintance, describing the appellant as a trusted guardian. DNA analysis, conducted by PW4, a government analyst, further confirmed the appellant as the biological father of PW1's child, despite his denial, solidifying his identity as the perpetrator.
14. The appellant's defence did not dislodge the prosecution's evidence. The upshot of the above analysis is that the prosecution proved their case beyond reasonable doubt. The appellant's conviction was safe and is upheld.
15. During the sentencing proceedings, the trial court considered the appellant's mitigation, the pre-sentence report, and being a first offender and exercised discretion. was considered and that he was a first-time offender. The trial court was of the view that although the minimum sentence was 20 years imprisonment, the appellant absconded for 8 months to defeat the ends of justice. Subsequently, he was sentenced to 30 years imprisonment. I see no reason to interfere.
16. 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.

