



**Likhodo v Republic (Criminal Appeal E165 of 2024)
[2025] KEHC 9295 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E165 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

ALLAN AMBOSO LIKHODO ALIAS DAVIE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 11th November 2024 at Kibera Chief Magistrate's Court, Sexual offence case No. E031 of 2024 Republic v Allan Amboso Likhodo before Hon. M. Murage (PM))

JUDGMENT

1. The Appellant was charged and, after a full trial, convicted by the Subordinate Court of the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 (the Act). The particulars were that on the 3rd day of March 2024 within Nairobi County, the appellant intentionally caused his Penis to penetrate the Vagina of JA a child aged seven(7) years. The appellant was sentenced to serve life imprisonment.
2. 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 that 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 and the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
3. PW1, Complainant gave evidence after a *voir dire* examination. PW1 testified that a baba picked her up took her to his house and did ' *tabia mbaya*' on her. She told the court that the appellant sexually assaulted her by touching her vagina. The complainant, a minor, testified that the appellant, referred to as " *mbaba*," assaulted her while she wore her school uniform. She was seated in the appellant's house, which she stated was unfamiliar to her, as she did not reside there. The appellant placed her on



a seat, and the house was later demolished with him inside. The complainant was rescued and taken to hospital, while the appellant was brought before the chief.

4. PW2, the complainant's mother, recounted that on the material day at around 7:00 pm, she was alerted by individuals approaching her home. She found a crowd, including children, carrying the complainant, who had been removed from a man's house alongside another child. Examining the complainant with a torch, PW2 observed blood from her private parts. She was informed the complainant was found in a tank, crying, at a house approximately one kilometre away. PW2 took the complainant to a Nyumba Kumi elder and subsequently to Nairobi Women's Hospital, where medical forms were issued.
5. PW3, a neighbour, testified that at around 6:00 pm, she heard children crying while passing the appellant's house. The children reported being locked inside and PW3 alerted the landlady, who summoned the caretaker. The caretaker broke the padlock, freeing the complainant and another boy. The complainant disclosed that the appellant lured her with promises of sweets, instructed her to remove her clothes, and sexually assaulted her, described as "*tabia mbaya*." PW3 escorted the complainant to PW2, who confirmed vaginal bleeding. The matter was reported to a village elder. PW3 identified the appellant in court.
6. PW4 was alerted by a tenant and found two children locked in the appellant's house. The caretaker broke the padlock, and the complainant revealed that the appellant had sexually assaulted her. PW4 accompanied the complainant to her grandmother, PW2, who observed blood upon examination. The matter was reported to a nearby village elder. PW4 identified the appellant in court.
7. PW5, a clinician, produced medical evidence from the complainant's treatment by Solomon Mwendwa. The examination revealed no external injuries but noted blood stains on the labia minora and majora, vaginal lacerations with blood discharge, a freshly torn hymen, and anal bruising with lacerations. The testimony of PW7, the investigating officer, corroborated the accounts of PW1, PW3, and PW4. During cross-examination, the appellant did not dispute the investigating officer's evidence and declined to submit further evidence.
8. The appellant, when placed on his defence, opted to remain silent. He was convicted and sentenced accordingly.
9. The appeal was canvassed by way of written submissions which have been duly considered which have been duly considered and there is no need to rehash.
10. 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.”
11. 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.



12. The offence of defilement under Section 8(2) of the *Sexual Offences Act*, No. 3 of 2006, applies to a child aged 11 years or younger, requiring proof of the complainant's age, penetration, and the perpetrator's identity.
13. PW3 produced the complainant's birth certificate, confirming her birth on 5th March 2017. The incident occurred on 3 March 2024, establishing the complainant as seven years old, satisfying the age requirement.
14. On penetration, the complainant testified that the appellant, referred to as "mbaba," took her to his house and committed an assault, described as "tabia mbaya," involving her vagina. PW3 corroborated this, observing blood stains on the complainant's private parts. PW5, a clinician, confirmed blood stains on the labia majora and minora and a freshly torn hymen, establishing penetration beyond reasonable doubt.
15. The appellant's identity was unequivocally established. The complainant identified him in court as "mbaba." PW3, who found the complainant in the appellant's house, along with PW4 and PW7, corroborated this identification.
16. In conclusion, the prosecution discharged its burden, proving penetration, the complainant's age, and the appellant's identity beyond reasonable doubt. The conviction for defilement is accordingly affirmed.
17. The trial court sentenced the appellant to life imprisonment. During sentencing the court considered his mitigation and the pre-sentence report. I have no doubt that the sentence imposed by the trial court on the main charge, in this case, was lawful and I see no reason to interfere.
18. For the above reasons, 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.

