



**Muhalia v Republic (Criminal Appeal E132 of 2024)
[2025] KEHC 9287 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E132 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

ALFRED SIMBIRI MUHALIA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
30th September 2024 by Hon. M. Murage (PM) at Kibera Chief Magistrate's
Court Sexual Offences Case no. 29 of 2018 Republic vs Alfred Simbiri Muhalia)*

JUDGMENT

1. The Appellant was charged and after a full trial convicted by the Subordinate Court of two counts of the offence 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 life imprisonment on both counts, and the sentences were set to run concurrently.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his appeal, he challenged 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. 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 case was as follows; PW1, PA, a minor, testified after *voir dire* examination, stating that the appellant, known as Baba Mercy, engaged in sexual intercourse with her on two occasions. She recounted that the appellant lured her into his house while she played with friends, removed her



- clothes, and proceeded, warning her against disclosure and promising sweets. In the second instance, he gave her KShs. 20, which she shared with PW2, her friend, as she confirmed upon recall.
5. PW2, EM, also a minor, testified after voir dire, corroborating that the appellant, whom she called Baba Mercy, summoned her to his house, forcibly removed her clothes, and had sexual intercourse with her. He threatened to kill her if she screamed.
 6. As discussed in the *Kenya Judiciary Criminal Procedure Bench Book* 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
 - “94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
 95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, Evidence Act). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; *Julius Kiunga M'birithia v R* High Court at Meru Criminal Appeal No. 111 of 2011).
 96. The evidence of a child, sworn or unsworn, received under section 19 of the *Oaths and Statutory Declarations Act* is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), CoK”
 7. The testimony of both complainants did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the child was telling the truth. In this regard, the trial magistrate noted that the complainant was consistent and steadfast in his. In addition, their evidence which was subjected to cross-examination remained consistent throughout.
 8. That notwithstanding, the complainants' testimonies were corroborated by PW5, SM, to whom PW1 disclosed the ordeal. PW5 relayed this to PW1's parents, including PW3, JM, who took PW1 to Nairobi Women's Hospital and reported the matter to Kabete Police Station. PW3 produced PW1's baptismal card, confirming her birth on 26 December 2009.
 9. PW4, CG, prompted by a neighbour's call, questioned her daughter, PW2, who confirmed being at the appellant's residence with PW1. PW4 took PW2 for a medical examination and presented her clinic card, verifying her birth date as 28th April 2011.
 10. PW6, John Njuguna, produced P3 and PRC forms for both complainants. PW1 exhibited anxiety, a whitish vaginal discharge, and a broken hymen. PW2's genitalia appeared normal but showed abnormal redness.
 11. PW7, PC Joyce Madahana, the investigating officer, arrested the appellant at the crime scene and detained him. She recorded statements from the complainants and a neighbour and sent samples to the government chemist for analysis.



12. The trial court found a prima facie case established. In his defence, the appellant denied the offences, claiming he was arrested after work and that Dr. Maundu extracted his DNA sample.
13. 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."
14. 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.
15. The evidence by the prosecution depicted with certainty that penetration had taken place. This is demonstrated by the testimony proffered by the first and second complainants, as well as the medical records produced by PW6, a certified clinician. PW6 maintained that for the first complainant, her hymen was broken while the second complainant had abnormal redness on her genitalia, both of which are synonymous with penile vaginal penetration.
16. The age of the complainants was settled. With regard to the first complainant, her baptismal card produced in court indicated that she was born on 29th December 2009, while the clinical card in the name of the second complainant indicated that she was born on 28th April 2011. They were indeed 9 years old and 7 years old at the time of the ordeal and were therefore children within the meaning of the law.
17. On identification, both of the complainants, the first complainant's father, the second complainant's mother, and the investigating officer positively affirmed his identity in court.
18. The prompt report, physical injuries, medical findings, and consistent testimony provide sufficient evidence as proof of the offence of defilement on both counts beyond reasonable doubt. His conviction for the offence of defilement was therefore proper and is upheld.
19. The appellant was sentenced to life imprisonment on both counts for the offence convicted. During sentencing, the court considered the pre-sentence report and the aggravating circumstances surrounding this case and provided the minimum sentence provided under the law. I see no reason to interfere with the sentence.
20. 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.

