



**Ogada alias Jomba v Republic (Criminal Appeal 54 of 2024)
[2025] KEHC 9253 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 54 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

VINCENT OGADA ALIAS JOMBA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. William Lopokoiyit (S.R.M) on 24th July 2023 at Kibera Chief Magistrate's Court Sexual Offense Case No. E.032 of 202 R2epublic vs Vincent Ogada)

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 dates between January 2022 and March 2022 at [Particulars Withheld] in Kibra Sub-County within Nairobi county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of VWS a child aged 11 years. He was sentenced to serve twenty (20) years' imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of 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 called five witnesses in support of their case. PW1, a minor, provided sworn evidence following voir dire, asserting that the appellant, known as Jomba, committed "tabia mbaya" against



- her. She testified that he lured her to his house, removed her clothes, threatened her with a knife, and penetrated her with his “dudu” on five occasions, offering her “kobole” money. PW1 reported the incidents to her aunt after A, her brother, found her in the appellant’s house, where the lights were off. She identified the appellant in court. PW1 was taken to Nairobi Women’s Hospital, and the matter was reported to the police.
5. PW2, AS, a casual labourer, testified that on 26th March 2022, while supervising children, he sent A to locate PW1, his 11-year-old sister VA found her in the appellant’s house, holding her panty, and PW1 disclosed that the appellant committed “tabia mbaya,” understood as rape.
 6. Neighbours intervened, assaulted the appellant, and escorted him to the police. PW1 received treatment at Nairobi Women’s Hospital, and a P3 form was issued. PW2 confirmed the appellant who had been a neighbour for two months, was present in court.
 7. PW3, A, a minor in class 3, gave sworn testimony after voir dire. On 25th March 2022, at 10:00 pm, he found PW1 in the appellant’s house with the door open, her legs apart on a mattress, and her panty removed. The appellant, present, attempted to flee. A informed PW2 and identified the appellant in court.
 8. PW4, John Njuguna, a clinician at Nairobi Women’s Hospital, produced PW1’s medical records, compiled by Faith Mukoya. Genital examination revealed a broken hymen with an old tag, consistent with prior penile-vaginal penetration, aligning with PW1’s account of repeated defilement.
 9. PW5, MA, testified that PW1 reported the appellant summoned her to his house, engaged in sexual intercourse multiple times, and paid her Kshs. 5 for mandazi. An age assessment confirmed that PW1 was 12 years old.
 10. The trial court established a prima facie case, placing the appellant, Vincent Ogada, on his defence. DW1, the appellant, gave an unsworn statement, asserting he was a casual labourer unaware of his offence until he was arraigned in court. He claimed that on 26th March 2022, a crowd arrested him, threatened him, and took him to the police station, where he denied the allegations.
 11. The appeal was canvassed by way of written submission which have been duly considered.
 12. 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.”
 13. 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.
 14. PW1, a minor, testified under oath after voir dire that the appellant, known as Jomba, engaged in sexual intercourse with her multiple times, describing it as “tabia mbaya.” She recounted being lured to his house, where he removed her clothes and penetrated her. PW4, a clinician at Nairobi Women’s Hospital, corroborated this with medical evidence showing multiple old hymenal tears, consistent with repeated penile-vaginal penetration, satisfying the element of penetration beyond reasonable doubt.



15. The complainant's age was established. Lacking a birth certificate, the prosecution presented an age assessment report by Dr. Mulama, estimating PW1 to be 12 years old at the time of the offence. The trial court accepted this report, confirming PW1 as a child under the *Sexual Offences Act*, No. 3 of 2006, fulfilling the age requirement.
16. PW1 identified him as Jomba, a neighbour on the same plot. PW3, A, corroborated this, finding PW1 in the appellant's house on a mattress, identifying him as Jomba. PW2, Alex Safari, confirmed the appellant's status as a neighbour, satisfying the identification element.
17. The appellant's defence was considered. The trial court found his denial unconvincing against the prosecution's consistent evidence, including PW1's testimony, medical findings, and corroborative accounts. The prosecution proved their case beyond reasonable doubt. The trial court's conviction was proper and is upheld.
18. The appellant was sentenced to serve twenty years imprisonment. During sentencing, the court considered the pre-sentence report, mitigation, and the fact that he was a first offender. In the premises, I see no reason to interfere with the sentence.
19. In the premises, 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.

