



REPUBLIC OF KENYA



**KENYA LAW**  
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**GOO v Republic (Criminal Appeal E036 of 2025)  
[2025] KEHC 11326 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11326 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E036 OF 2025  
DR KAVEDZA, J  
JULY 31, 2025**

**BETWEEN**

**GOO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. M. Maroro (SPM) on 27th February 2025 at Kibera Chief Magistrate's  
Court, Sexual offence case No. E102 of 2022 Republic v Geoffrey Okusi Okwalo)*

**JUDGMENT**

1. The Appellant was charged and, after full trial, convicted by the Subordinate Court of the offense 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 the diverse dates between 7/10/2022 and 15/10/2022, at Kawangware, within Nairobi County, unlawfully and intentionally caused his penis to penetrate the vagina of vagina L.A., a child aged 10 years. He was sentenced to 20 years' imprisonment on the main count and 10 years on the alternative count.
2. Aggrieved, he filed an appeal challenging the totality of the prosecution's evidence against which he was convicted. He contended that the learned trial magistrate erred in his verdict as he was not properly identified as the perpetrator of the said offences, that the prosecution failed to prove their case beyond reasonable doubt, and that his conviction was based on the sole testimony of the complainant.
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 conclusion on the evidence without overlooking the conclusions of the trial court, but bearing in mind it never saw the witnesses testify.



4. The complainant, PW1, a minor, provided a detailed account following a voir dire examination. On the material day, the appellant, known to her as ‘Omari’ and a neighbour, summoned her to his residence under the pretext of washing utensils and making his bed. He then forcibly pulled her onto the bed, lifted her clothes, and penetrated her vagina, causing her significant pain. PW1 testified that she shouted, prompting PW2, Cynthia Wanjiru (‘Bobo’), to intervene and question the appellant’s actions.
5. The appellant offered PW1 Kshs. 50 to remain silent and threatened her with a knife, warning of violence if she disclosed the incident. PW1 later confided in PW2, her brother, and her aunt, revealing the truth after initially fabricating a story due to fear. She confirmed this was the first instance of sexual assault, though a second incident occurred on 15/10/2022, corroborated by her receiving Kshs. 25 and Kshs. 30 from the appellant.
6. PW2, the complainant’s mother, corroborated PW1’s account, identifying the appellant as a neighbour and confirming she reported the incident to her employer, who advised reporting to Muthangari Police Station. PW2 produced PW1’s birth certificate, confirming her age.
7. PW3, IOA, the complainant’s aunt, testified that on 15<sup>th</sup> October 2022, PW1 appeared distressed with a cut shoe. Upon being questioned by Felix, PW1 disclosed the defilement, leading to a report at Post Hope Police, who referred the matter to Muthangari Police Station.
8. PW4, John Njuguna, a clinician, produced medical evidence showing PW1 sustained a vaginal tear, laceration, and abnormal redness, with lab results confirming HIV infection. PW5, the investigating officer, supported the consistent accounts of PW1, PW2, and PW3.
9. In his defence, the appellant denied the charges, claiming he was at work on 15<sup>th</sup> October 2022 and was only informed of the allegations upon returning home. He alleged insufficient investigation and denied the accusations, and asserted that they were fabricated.
10. After a full trial, the appellant was convicted accordingly. 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.
11. Section 8(1) and (3) of the *Sexual Offences Act*, No. 3 of 2006 provides thus: -  
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 ages of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
12. The elements of defilement under Section 8(3) of the *Sexual Offences Act*, No. 3 of 2006: the victim’s age, penetration, and identification of the perpetrator, while also considering the appellant’s defence.
13. On age, the complainant testified she was 13 years old during the offence. PW2, her mother, produced her birth certificate, confirming her birth on 11th March 2010, establishing her as 13 years old at the material time, confirming she was a child within the meaning of the law.
14. Regarding penetration, PW1 testified that the appellant, under the pretext of summoning her to wash utensils and make his bed, forcibly pushed her onto the bed and inserted his penis into her vagina. This account is corroborated by medical evidence from PW4, a clinician, who produced documents



detailing a vaginal tear, laceration, and abnormal redness, with laboratory analysis confirming she was HIV-positive. These findings unequivocally establish penetration, fulfilling the second element.

15. On identification, PW1 testified that she knew the appellant as ‘Omari’, a neighbour residing in the same plot. PW2, the complainant’s mother, corroborated this, confirming the appellant’s identity as their neighbour. The consistent identification by both witnesses, coupled with their familiarity with the appellant, leaves no doubt as to the perpetrator’s identity.
16. The appellant’s defence, which denies the allegations and claims insufficient investigation, lacks corroborative evidence and fails to introduce reasonable doubt. The prosecution’s evidence was cogent, consistent, and supported by medical documentation, establishing all elements of defilement beyond reasonable doubt. The court finds no merit in the appellant’s defence, as it does not displace the overwhelming evidence of guilt.
17. Accordingly, the court affirms the conviction under Section 8(3) of the *Sexual Offences Act*, No. 3 of 2006.
18. However, the trial court convicted the appellant on both the main charge and the alternative charge. In doing so, the trial court fell into error. It is trite law that a conviction cannot be made on both the main charge and the alternative charge. This position was stated by the Court of Appeal in *David Ndumba vs Republic* [2013] eKLR, thus:-

“On the issue of the alternative charge, we find that nothing turns on the fact that the trial court did not make a pronouncement on the same. In *M.B.O. –vs- Republic*, Criminal Appeal No. 342 of 2008, this Court held,

“The practice of charging offences in the alternative is one of abundant caution and that is why no finding is made on such charge once there is ample evidence to support the main charge.”

19. The charge is an alternative to and not an addition to the main charge, and therefore, once the trial court found that the prosecution had proved the main charge of defilement, the trial magistrate had no business in proceeding to convict the Appellant on the alternative.
20. For that reason, I partially allow the appeal on conviction by setting aside the conviction on the alternative charge of the offence of committing an indecent act with a child, contrary to Section 11(1) of the *Sexual Offences Act*, No. 3 of 2006.
21. With regard to the sentence imposed, the appellant was sentenced to serve twenty (20) years’ imprisonment for the main charge. During sentencing, the court considered the appellant’s mitigation, the time spent in custody, and the fact that the appellant is a first offender. I see no reason to interfere.
22. In the premises, the appeal on sentence on the main charge is found to be lacking in merit and is dismissed.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Mr. Ngethe for the Appellant



Appellant Present

Ms. Timoi for the Respondent

Ms. Karimi Court Assistant.

