



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Waka v Republic (Criminal Appeal E045 of 2025)  
[2025] KEHC 11266 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11266 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E045 OF 2025**

**DR KAVEDZA, J**

**JULY 31, 2025**

**BETWEEN**

**CLINTON WAKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 20th March 2025 at Kibera Chief Magistrate's Court, Sexual offence case No. E117 of 2024 Republic v Clinton Waka before Hon. Kabuya I.M (SPM))*

**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(3) of the *Sexual Offences Act* No. 3 of 2006 (the Act). The particulars were that on 22<sup>nd</sup> September 2024, within Nairobi County, the appellant intentionally caused his Penis to penetrate the Vagina of S I, a child aged fourteen (14) years. The appellant was sentenced to serve twenty (20) years imprisonment.
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 upon him.
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 that 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 and the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. The prosecution's case was as follows: On 22 September 2024, PW1, S I, a 14-year-old minor, was sent to buy fish at 1:00 pm but returned at 7:00 pm with chicken. She encountered the appellant,



- Clinton Waka, and his sister, who directed her to visit his house after delivering the chicken, threatening consequences if she refused. At his residence, the sister left, and the appellant locked the door, retrieved a condom from under his bed, and had sexual intercourse with PW1. She spent the night there.
5. The next day, he snuck her out, threatening her with a knife to remain silent, as her mother was searching for her. Initially, PW1 lied to her mother, claiming she slept in a field or at a friend's, but confessed at school after pressure from her brother, identifying the appellant as the perpetrator. They reported the incident to Kilimani Police Station and proceeded to Coptic Hospital.
  6. On cross-examination, PW1 explained her silence was due to visitors who might gossip and the appellant's threat to stab her. She noted no neighbours were nearby.
  7. PW2, her mother, confirmed the minor's absence until the next day and her eventual confession after her brother's intervention. She denied bribery allegations against her son.
  8. PW3, nurse Edith Kerubo, examined PW1 on 23rd September 2024, finding an old hymenal tear and whitish discharge but no recent injuries. Based on PW1's history, she concluded defilement occurred.
  9. PW4, Cpl Oreo, recorded PW1's statement that the appellant had sex with her twice and participated in his arrest.
  10. In his defence, the appellant, a mason, claimed that on the material day, he was at Two Rivers Mall until 5:00 pm, watched football until 8:25 pm, and returned home at 9:00 pm to dine with his wife and sister. The next day, a mob accused him of defilement and demanded a bribe, which he refused, leading to his arrest.
  11. DW2, neighbour Monica Jepkorir, confirmed spending the day with the appellant's wife, and DW3, C C, noted the appellant's absence until 9:00 pm. DW4, Joel Musyoka, corroborated the appellant's alibi until 8:30 pm. DW5, the appellant's wife, confirmed his return at 9:00 pm and their night together.
  12. The appellant was convicted and sentenced accordingly.
  13. 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."
  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.
      - (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.
  15. The offence of defilement under Section 8(3) of the Sexual Offences Act, No. 3 of 2006 applies to a child aged between 12 and 15 years. The offence of defilement under Section 8(1) of the Sexual Offences Act requires proof of three elements: the complainant's age between 12 and 15 years, penetration, and the perpetrator's identity. The prosecution established this beyond reasonable doubt.



16. On the complainant's age, she testified that she was 14 years old. Her mother PW2 and a Birth Certificate produced corroborated the evidence indicating that she was born on 4<sup>th</sup> July 2010. She was therefore a child within the meaning of the law.
17. On the element of penetration, PW1's consistent testimony described how the appellant lured her to his house on 22nd September 2024 under threats, locked the door, retrieved a condom, and had sexual intercourse with her. Though PW3, a nurse, found an old hymenal tear and no fresh injuries, PW1's detailed account, her fear, silence under threat, and eventual disclosure after pressure from her brother strongly supported unlawful sexual contact. Under the law, even partial penetration constitutes defilement, which PW1's testimony sufficiently demonstrated.
18. On the identity of the perpetrator, the complainant testified that she knew the appellant, PW1, knew him by name, and detailed his threats, overnight detention, and sneaking her out the next morning. PW2 and PW4, the Investigating Officer, corroborated this sequence, confirming the appellant's involvement. The appellant's identity was clear.
19. The defence, through DW1 to DW5, presented an alibi, claiming the appellant was at Two Rivers Mall until 5:00 pm, watched football until 8:30 pm, and returned home at 9:00 pm. However, contradictions among defence witnesses, including DW3's and DW5's accounts of the appellant's whereabouts, weakened the alibi defence. The prosecution's coherent evidence, anchored by PW1's credible testimony, outweighed the defence's claims.
20. The prosecution proved all elements of defilement under Section 8(1), punishable under Section 8(3). The trial court's conviction of the appellant was sound and supported by the evidence. The conviction of the trial court was proper and is affirmed.
21. The appellant was sentenced to serve twenty (20) years imprisonment. The Court considered the pre-sentence report and imposed the minimum available sentence under the law. The sentence imposed was therefore lawful, and I see no reason to interfere.
22. 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 31<sup>ST</sup> DAY OF JULY 2025**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant present

Timoi for the Respondent

Karimi - Court Assistant

