



**Katomo v Republic (Criminal Appeal E026 of 2025)
[2025] KEHC 11152 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E026 OF 2025
DR KAVEDZA, J
JULY 29, 2025**

BETWEEN

SAMUEL NYONGESA KATOMO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. C. Njagi (PM) on 30TH January 2025 at Kibera Chief Magistrate's Court, Sexual offence case No. E067 of 2023 Republic vs Samuel Nyongesa Katomo)

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 Offenses *Act No.3 of 2006*. The particulars were that on the 21st day of May in Dagoretti Sub-County within Nairobi County, he intentionally and unlawfully caused his genital organ to penetrate a female genital organ, a girl aged 14 years. He was sentenced to serve thirty (30) years imprisonment.
2. 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 sentence.
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 that the evidence without overlooking the conclusions of the trial court, but bearing in mind it never saw the witnesses testify.
4. The prosecution called a total of four witnesses in support of their case. The complainant, SM, gave sworn evidence after voir dire examination. She testified that she was 14 years old. That on 21st May



2023, she was with her friend, Abigael, who was in form two. They found the appellant and his friends. Abigael suggested they attend the appellant's birthday party. Upon reaching the appellant's house, they found Samuel and his friend there. They ate cake and soda.

5. The complainant told the court that she was intending to leave at 1 p.m., but the appellant called her back. He proposed a romantic relationship, which she accepted. He offered her juice, causing her to lose consciousness. Upon waking up, she found herself in bed with the appellant, her underwear on the floor, and experienced pain in the genital region.
6. When questioned, the appellant deferred explanation to Friday and warned her against disclosure. On Friday, the complainant returned to his residence, finding him with another individual. The school director was informed, leading to the appellant's arrest. The complainant was taken to the hospital, where she was examined and treated. She identified the appellant, introduced by Abigael, as Samuel in court.
7. PW2, the complainant's mother, testified that on 27th May 2023, while returning from purchasing diapers, she could not locate the complainant. She was informed of her arrest, and she found her and the appellant kneeling amidst a crowd, including the school director and caretaker. They reported the incident to Muthangari Police Station. SM disclosed to PW2 that she had sexual intercourse with the appellant, whom PW2 identified in court. However, during cross-examination, PW2 contradicted her earlier statement, denying SM's disclosure of the sexual encounter.
8. PW3, John Njuguna, a clinician, testified that the complainant, accompanied by her mother, underwent a medical examination. She appeared calm with no visible physical injuries. Examination revealed a torn, healed hymen, and she received medication to prevent infection. PW3 produced medical documents and noted that hymen healing typically occurs within 24 to 72 hours. During cross-examination, he acknowledged multiple potential causes for a torn hymen, but the complainant attributed it to penetrative sex.
9. PW4, PC Mary Wanjiru, corroborated the complainant's testimony. She testified that PW2 initially obstructed access to the complainant. The minor identified the appellant as her friend and neighbour, and PW4 confirmed his identity in court as the arrested individual.
10. In his defence, the appellant testified that on 21st May 2023, he heard a knock at his door and saw a young girl, SM, who entered and sat briefly. Subsequently, the caretaker arrived, inquired about her presence, and a neighbour, overhearing, began shouting. This attracted a crowd, and the appellant was ordered to kneel. He claimed strained relations with the caretaker due to unpaid rent disputes and denied knowing SM or that she was in his house beyond the brief visit.
11. 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.
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: -
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.
14. 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.
 15. On age, PW1, SM, testified she was 14 years old during the offence on 21st May 2023. PW2, her mother, produced her birth certificate, confirming her birth on 30th October 2008, establishing her as 14 years old at the material time, thus satisfying the age element.
 16. Regarding penetration, the complainant stated that after consuming juice at the appellant's residence, she lost consciousness, awakening in his bed with her underwear on the floor and experiencing crotch pain. PW3, a clinician, corroborated this with medical evidence of a healed hymen tear, indicating penetration. This evidence substantiates the element of penetration beyond reasonable doubt.
 17. On identification, the complainant testified that he knew the appellant, Samuel, from his birthday party, where he proposed a romantic relationship, which she accepted. PW4, PC Mary Wanjiru, confirmed SM identified the appellant as her friend and neighbour, reinforcing her testimony.
 18. The appellant's defence that he did not know the complainant was implausible. The court finds this defence inconsistent and implausible against SM's detailed testimony, corroborated by PW2's initial account, PW3's medical findings, and PW4's testimony, supported by medical evidence of penetration.
 19. The prosecution has proved all elements of defilement beyond reasonable doubt. The appellant's defence fails to cast reasonable doubt, and the conviction under Section 8(3) is affirmed.
 20. The appellant was sentenced to 30 years' imprisonment for defilement under Section 8(3) of the *Sexual Offences Act*, No. 3 of 2006. The trial court considered the pre-sentence report, the appellant's mitigation, and his status as a first offender in determining the sentence. However, the court finds the 30-year term excessive, as the law prescribes a minimum of 20 years' imprisonment for defilement of a child aged 14. Given the circumstances, including the appellant's lack of prior convictions and the mitigation presented, a sentence aligning with the statutory minimum is appropriate.
 21. In the premises, I hereby set aside the sentence of thirty (30) years imposed by the trial court and substitute it with a sentence of twenty (20) years imprisonment. The sentence shall run from 30th January 2025, the date of the appellant's conviction, by the trial court, less two (2) months spent in remand custody.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 29TH DAY OF JULY 2025

D. KAVEDZA

JUDGE

In the presence of:

Kinyanjui for the Appellant

Mutuma for the Respondent

Karimi Court Assistant.

