



**Odie v Republic (Criminal Appeal E006 of 2024)  
[2024] KEHC 7670 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7670 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E006 OF 2024**

**KW KIARIE, J  
JUNE 27, 2024**

**BETWEEN**

**SAMUEL ODIE ODIE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in S.O.A case NO.46 of 2020 of the Principal Magistrate's Court at Ndhiwa by Hon. B.W. Murangasia-Resident Magistrate)*

**JUDGMENT**

1. Samuel Odie Odie, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* No. 3 Of 2006 and of the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code*.
2. The particulars of the offences are that on the 27<sup>th</sup> day of August 2020 within Homa Bay County, he intentionally and unlawfully caused his penis to penetrate the vagina of MAO, a child aged eleven years. On the same day and place, he unlawfully assaulted Jared Okoth Omollo, occasioning him actual bodily harm.
3. The appellant was sentenced to life imprisonment in count one and to serve two years imprisonment in count two. The sentences were ordered to run concurrently. He was aggrieved and filed this appeal against the sentence.
4. The appellant was in person. He raised one ground of appeal. He raised the following grounds of appeal:
  - a. That the trial magistrate erred both in law and fact in convicting the appellant without considering that the evidence brought before the court was not only fabricated but malicious and far-fetched and meant to implicate the appellant falsely.



- b. That the trial court erred in convicting the appellant by allowing the court to be used to settle scores that were not related to the alleged offence.
  - c. That the evidence tendered in court was uncorroborated.
  - d. That the complainant's age was not ascertained.
  - e. The trial court erred in both law and fact in convicting the appellant on evidence marred with contradictions and malice.
  - f. The trial court convicted the appellant without considering that he was not medically tested to ascertain if he committed the act.
5. The state opposed the appeal through Mr. David Ndege, learned counsel, because:
- a. PW2, PW3, PW4 & PW5 corroborated the complainant's evidence.
  - b. PW5, the Clinical Officer who examined the complainant. The examination revealed that her external genitalia had ulcerations, the hymen was bleeding inwardly, bruises on the vagina walls and fresh blood from the lacerations.
6. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, considering that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
7. An offence of defilement is established against an accused person when the prosecution has proved the following ingredients:
- a. That there was penetration of the complainant's genitalia;
  - b. That the accused was the perpetrator and
  - c. The victim must be below eighteen years old.
- This position was echoed in the case of *Fappyton Mutuku Ngui v Republic* [2012] eKLR. Ngugi J. (as he was then) said:
- Going by this definition of defilement... the issues which the court needs to determine...first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child, and finally, whether the penetration was by the Appellant.
8. I will determine if the prosecution proved these ingredients to the required standards.
9. MAO (PW1), the complainant, testified that she was born on October 5th, 2008. The copy of the Certificate of Birth that was produced as an exhibit confirmed this. At the time of the alleged offence, she was eleven years and ten months old.
10. Section 8(2) of the *Sexual Offences Act* provides:
- 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.
11. The complainant's age for Section 8(2) of the *Sexual Offences Act* was therefore proved as required.
12. The complainant testified that she had gone to buy some cooking oil when she found the appellant standing at the door of Mama Ras' house. While returning home, she saw him still standing at the same place. He called her. She went where he was. He held her by the hands and pulled her inside the house.



- He locked the door and warned her not to raise any alarm. He embarked on defiling her, and while still in the process, the door was knocked, and her uncle entered. He found the appellant in the act. She ran out and left the two men quarrelling.
13. Jared Okoth (PW2) contended that he heard some alarm, and when he entered the house, he found the appellant defiling the complainant. The appellant stabbed him in the hand. He held the appellant, and Kennedy Ouma found them struggling.
  14. Kennedy Ouma Akuri (PW3) 's evidence was that he found the appellant and Jared Okoth struggling over a knife. Noises from the house had attracted him. Jared asked the appellant why he had defiled MAO. He assisted in pinning down the appellant, but he overpowered them and ran into some sugar cane plantation.
  15. The complainant's evidence was that before the intervention by her uncle, the appellant had already penetrated her.
  16. Bernard Otieno (PW4) testified that he saw the appellant running when he approached the house where screams were coming from.
  17. Clinical officer Nelson Waka (PW5) examined the complainant. The findings were that she sustained an abrasion on the knee, the external genitalia had ulceration on the labia majora, and the hymen was bruised and bleeding inwardly. There was fresh blood, a "creamish" discharge. He formed an opinion that there was penetration.
  18. The evidence on record proved to the required standards that the complainant was defiled.
  19. The complainant's and Jared Okoth's (PW2) evidence regarding whether the complainant raised the alarm was contradictory. These did not go to the core of the two witnesses' credibility.
  20. The circumstances of this case did not require a medical examination on the appellant for the prosecution to prove their case.
  21. I, therefore, find that the appeal lacks merit, and the same is dismissed.

**DELIVERED AND SIGNED AT HOMA BAY ON THIS 27<sup>TH</sup> DAY OF JUNE 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

