

KENYA / JUDGMENT

SMK v Republic [2026] KEHC 2535 (KLR)

[2026] KEHC 2535 (KLR)**COURT**

High Court

BEFORE

DR Kavedza

CASE / FILE NUMBER

Criminal Appeal E126 of 2025

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

SMK v Republic (Criminal Appeal E126 of 2025) [2026] KEHC 2535 (KLR) (26 February 2026)
(Judgment) Neutral citation:

[2026] KEHC 2535 (KLR) Republic of Kenya In the High Court at Kibera Criminal Appeal E126 of 2025 DR Kavedza, J February 26, 2026 Between SMK Appellant and Republic Respondent (Being an appeal against the original conviction and sentence delivered on 27th July 2023 by Hon. W. Lopokoityit (SRM) at Kibera Chief Magistrate's Court, Sexual Offences Case No. S.O E099 of 2021 Republic vs Samuel Mutua Kasuku)

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 the diverse dates between February 2021 and August 2021 at [Particulars Withheld] area in Riruta Dagoretti within Nairobi County the appellant intentionally caused his penis to penetrate the vagina of P.N, a child aged 16 years. He was sentenced to serve fifteen (15) years imprisonment. 2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant 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. PW1, the complainant gave sworn evidence that she was 13 th March 2005. She identified the appellant as her uncle by virtue of his marriage to her aunt. She stated that while residing with her aunt, the appellant, and their children in a house in [Particulars Withheld], the appellant would, on numerous occasions at night when others were asleep, approach her bed, undress, and insert his penis into her vagina. She described the act plainly as the insertion of "his thing for urinating" into "her thing which she uses to urinate." She did not

report the incidents earlier because the appellant had threatened to beat her if she told anyone. 5. PW1 further testified that the matter came to light only after she complained of stomach pain to the pastor's wife at AIC Kabiria, leading to her being taken to hospital where she was found to be pregnant. She then named the appellant as responsible for the pregnancy. Medical examination confirmed that she was pregnant at that time. It also emerged that the appellant's biological daughter (PW2's child) was similarly pregnant by him, though PW1 was not aware of that fact. PW1 subsequently gave birth to a son, who now resides with her at [Particulars Withheld] Children's Home. 6. PW2, the appellant's wife and aunt to PW1, gave sworn evidence confirming that PW1 began living with them in their two-room house in [Particulars Withheld] in 2020. In February 2021, she observed that PW1 was unwell and took her to hospital. There, she was confirmed to be pregnant of approximately 12 weeks. PW1 initially did not identify the father but later disclosed to the pastor's wife that the appellant had repeatedly had sexual intercourse with her throughout 2020. 7. Upon learning this, PW2 had her own daughter tested, who was also found pregnant by the appellant. Both girls reported threats by the appellant to remain silent. The matter was reported to police on 18 th September 2021. 8. PW3, John Njuguna a clinical officer at Nairobi Women's Hospital, produced the P3, PRC, and GRC forms dated 18 th September 2021. These confirmed PW1 was pregnant with no external injuries, a broken hymen at the 6 o'clock position, no sexually transmitted diseases, and gestation estimated at 30 weeks on examination. 9. PW4, PC Elizabeth Omuse an officer at the Gender Desk, Riruta Police Station, recorded the complaint from PW2 on 18 th September 2021. She escorted PW1 for medical examination, confirmed the pregnancy at six months, arrested the appellant, and arranged DNA testing of the appellant, PW1, and the child born to PW1. The DNA report established paternity with a probability of 99.99% or higher that the appellant is the biological father. 10. In his defence, the appellant gave an unsworn evidence and did not call any witness. He denied any sexual involvement with PW1, asserted that she came to live with them in 2020, claimed the allegations were fabricated to compromise him because he had no children of his own. He described the circumstances of his arrest on 18 th September 2021. 11. The appellant is accordingly found guilty as charged. 12. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them. 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 (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. 15. On the element of age. The complainant, PW1, testified on oath that she was born on 13 th March 2005. This was confirmed by the birth certificate produced. At the material time in 2020 and 2021, when the offences occurred, she was therefore fifteen years old, turning sixteen in March 2021. This evidence was not challenged. The prosecution thus

established beyond reasonable doubt that the victim was a child under the age of eighteen years as required by section 8(1) of the Sexual Offences Act . 16. On the element of penetration. PW1 gave a clear and cogent account in her sworn testimony. She stated that on numerous occasions at night, while others slept, the appellant would come to her bed, remove his clothes, and insert his penis into her vagina. She described the act plainly as the insertion of “his thing for urinating” into “her thing which she uses to urinate.” This direct oral evidence of penetration was materially corroborated by the medical examination conducted by PW3, the clinical officer at Nairobi Women’s Hospital, on 18 th September 2021. The P3 form and related documents confirmed that the complainant’s hymen was broken at the 6 o’clock position, with no external injuries noted, and that she was pregnant at approximately 30 weeks’ gestation. No alternative cause for the hymenal injury was suggested or supported by the evidence. The court is satisfied that penetration was proved beyond reasonable doubt. 17. On the identity of the perpetrator. PW1 was firm, consistent, and unshaken in her identification of the appellant as the person who defiled her. She identified him as her uncle by marriage to her aunt (PW2), with whom she resided in their two-room house in Kabiria from 2020. She gave a detailed account of the repeated acts occurring in that very house at night. PW2, the appellant’s wife and the complainant’s aunt, knew the appellant intimately as her husband and confirmed that PW1 lived with them during the relevant period. PW2 further testified that both PW1 and her own daughter became pregnant by the appellant, and that both girls reported threats by him to remain silent. The DNA evidence linked the appellant to the offence. There was no suggestion of mistaken identity, and the complainant’s evidence on identification withstood cross-examination. 18. The appellant, in his unsworn statement from the dock, denied any sexual involvement with PW1. He asserted that the allegations were fabricated, that PW1 and PW2 were attempting to compromise him because he had no children of his own, and that he was never involved with her. He called no witnesses and adduced no evidence to support his assertions. 19. Upon careful consideration, the court finds the appellant’s bare denial implausible and wholly uncorroborated when set against the prosecution’s case. The testimony of PW1 was detailed, coherent, and consistent throughout. It was strongly supported by PW2’s account of the living arrangements, the discovery of the pregnancies, the threats reported by the girls, the medical confirmation of pregnancy and hymenal injury, and, crucially, the DNA report produced by PW4 establishing paternity of the child born to PW1 with a probability of 99.99% or higher that the appellant is the biological father. The scientific evidence of paternity directly links the appellant to the repeated acts of penetration described by PW1 and removes any reasonable possibility of fabrication or mistake. 20. In the result, all essential elements of the offence of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act have been proved beyond reasonable doubt. The appellant’s defence fails to raise any reasonable doubt. The conviction is accordingly affirmed. 21. On sentence, the appellant was sentenced to fifteen (15) years’ imprisonment. The record shows that the trial court considered the pre-sentence report, the appellant’s mitigation and the fact that he was not a first offender before arriving at that sentence. The sentence imposed was legal and I see no reason to interfere. 22. In the

premises, the application is found to be lacking in merit and is dismissed in its entirety. Orders accordingly. JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 26 TH DAY OF FEBRUARY 2026 D. KAVEDZA JUDGE In the presence of: Appellant Absent Mr. Karanja for the Respondent Karimi Court Assistant

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/2535>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/smk-v-republic-2026>

Prepared on 29 October 2026 · Esheria