



REPUBLIC OF KENYA



**KENYA LAW**  
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**Motanya v Republic (Criminal Appeal 182 of 2023)  
[2025] KEHC 7514 (KLR) (3 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7514 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 182 OF 2023**

**DR KAVEDZA, J**

**JUNE 3, 2025**

**BETWEEN**

**JULIUS MOTANYA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
7th December 2023 by Hon. I.M Kabuya (SPM) at Kibera Chief Magistrate's  
Court Sexual Offences Case No. E118 of 2021 Republic vs Julius Motanya)*

**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. He was sentenced to serve thirty (30) years' imprisonment.
2. Being aggrieved, he filed an appeal challenging 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 conclusions on that evidence without overlooking the conclusions of the trial court, but bearing in mind that it never saw the witnesses testify.
4. The prosecution called five witnesses against the appellant, Julius Motanya. PW1, M.M., a 16-year-old, testified under oath. Born on February 16, 2006, she attended [Particulars Withheld] Primary, completed her KCPE in 2020, lived in Kangemi Ndovu, and attended Kangemi South SDA Church, where the appellant led the Pathfinders club. In October 2020, the appellant invited PW1 to his mabati house in St. Joseph. Alone, they sat on the bed; he proposed friendship. PW1 assumed a sibling-like bond, but he touched her breasts, expressed desire, removed her underwear, and penetrated her,



causing pain. He escorted her home. PW1 stayed silent from fear. A similar incident occurred two weeks later.

5. Two months later, PW2, MO, PW1's sister-in-law, noticed changes and confirmed PW1's pregnancy at a chemist. PW1 admitted to encounters with the appellant. Church elders, the appellant, and his father met them. The appellant initially took responsibility, promising care, but later denied paternity, alleging multiple partners, and blocked PW1's number. PW1 gave birth in August 2021. After the appellant refused responsibility, PW2 reported to Kangemi Police Station. The appellant was arrested; PW1 was examined at Nairobi Women's Hospital, presenting her birth certificate, treatment notes, a Post Rape Care form, and a P3 form. In cross-examination, PW1 explained the delayed report due to the appellant's refusal and affirmed her truthfulness.
6. PW2 testified the appellant first accepted, then rejected responsibility, demanding a DNA test. PW2 reported to police after failed church talks, confirming PW1's 2020 birth certificate. PW3, Dennis Osoro, supported her account.
7. PW4, John Njuguna, a clinician at Nairobi Women's Hospital, saw PW1 on September 7, 2021, with a child from the defilement. He noted no genital injuries but a missing hymen post-delivery, producing the Post Rape Care and P3 forms. In cross-examination, he said no fixed timeline existed for seeking medical help.
8. PW5, Betty Njeri, a GBV champion, learned of church negotiations about PW1's pregnancy. She summoned PW1 to the chief's office, advised police reporting, and, post-delivery, recorded PW1's statement, referring her to Nairobi Women's Hospital. In cross-examination, PW5 said PW1 was 14, despite the birth certificate.
9. In his defence, the appellant, a casual laborer and Pathfinders leader at Kangemi South SDA Church claimed he was teaching at Githurai Central SDA Church on August 10, 2020. He admitted PW1 joined his club but expelled her for being "ill-mannered" sparking friction with her brother. A year later, he was accused of impregnating PW1, which he denied, citing missing DNA results. In cross-examination, he admitted expelling PW1, lacked proof of his Githurai claim, and denied refusing responsibility or DNA interest, maintaining innocence.
10. To succeed in a prosecution for defilement, it must be proven that the accused 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."
11. 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.
12. On the ingredients of the offence of defilement, the element of age, the complainant testified that she was born on 16<sup>th</sup> February 2006. PW1's birth certificate, treatment notes, Post Rape Care form, and P3 form established PW1's age as 14 at the time and the sexual act.
13. On the ingredient of penetration, the complainant told the court that in October 2020, the appellant, leader of the Pathfinders club at Kangemi South SDA Church, lured her to his mabati house, proposed a "friendship," and proceeded to touch her inappropriately, remove her underwear, and penetrate her,



causing pain. A second incident occurred two weeks later. PW2, MO, PW1's sister-in-law, observed behavioural changes and confirmed PW1's pregnancy in December 2020 via a chemist test. PW1 disclosed the appellant's acts. PW4, John Njuguna, a clinician at Nairobi Women's Hospital, examined PW1 on 7 September 2021, noting a missing hymen post-delivery, and produced the Post-Rape Care and P3 forms. PW5, Betty Njeri, a GBV champion, facilitated police reporting and PW1's medical examination. The ingredient of penetration was therefore adequately proved.

14. The complainant, PW1, testified that the appellant, Julius Motanya, lured her to his residence and defiled her, with a similar incident occurring two weeks later. She identified the appellant as the perpetrator. Initially, PW1 misled her sister, PW2, denying sexual intercourse despite her pregnancy. PW2 reported the matter to the police one year later, citing the appellant's refusal to accept responsibility for the child as the reason for the delay.
15. In his sworn defence, the appellant admitted PW1's membership in the club but claimed he expelled her for being "ill-mannered," sparking friction with her brother. He alleged he was teaching at Githurai Central SDA Church on 10 August 2020, but adduced no evidence to support this alibi. He denied impregnating PW1, noted the absence of DNA results, and asserted he never refused responsibility or a DNA test. In cross-examination, he conceded expelling PW1 but failed to substantiate his Githurai claim.
16. The appellant contends a DNA test was conducted but the results, which he claims would prove his innocence, were withheld by the prosecution. The record confirms the appellant underwent a DNA test to determine the paternity of the child born from the alleged defilement, yet the results were not produced in court. The trial magistrate held that DNA evidence was unnecessary, as the charge was defilement, not paternity.
17. In my considered view, the trial court erred in this determination. Whilst DNA testing is not mandatory to prove a sexual offence, in the instant case where a child was born from the alleged defilement, no other medical evidence was tendered, and the report was made one year after the incident DNA testing was essential to establish beyond reasonable doubt the appellant's connection to the offence as the biological father. The absence of such evidence undermines the prosecution's case, warranting scrutiny of the conviction.
18. The High Court has been categorical on the importance of conducting DNA tests in certain cases where there is need to establish with certainty, the connection between the commission of the offence and the alleged transgressor. In *Republic v Timothy Mwenda Gichuru & 2 others* [2017] eKLR, the court stated;

“Now that I am of that persuasion, is this request for blood samples merited? In this age of technology, DNA has become an investigative tool which will determine with almost certainty that a person committed or did not commit an offence. Such evidence is also admissible in judicial proceedings whether civil or criminal or sui generis.”

19. In *Stephano Ngigi Maigwa v Republic* [2022] eKLR, the court observed;

“The appellant further submits that the complainant's evidence being the only testimony relied upon, and the DNA testing not having been done, the medical examination done on 16th July 2012 was too remote to connect the appellant to the defilement.

...The analysis already done above on the cases concerning the fact that DNA testing is not essential, are helpful as shown where the connection between the commission of the offence and the medical report as to penetration can be readily made. In the present case, I



do not think there was a proper basis laid by clear evidence beyond reasonable doubt that the accused was the person who penetrated the complainant.”

20. In view of the foregoing authorities, I find that the appellant was not positively identified as the perpetrator of the offence. The benefit of the doubt raised must be awarded to the appellant.
21. In the premises, the appeal is found to have merit and is allowed. The appellant is set at liberty unless otherwise lawfully held.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF JUNE 2025.**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant present

Mutuma for the Respondent

Tonny Court Assistant.

