



**Too v Republic (Criminal Appeal 16 of 2019)  
[2025] KEHC 7918 (KLR) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7918 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL 16 OF 2019**

**JR KARANJA, J**

**JUNE 4, 2025**

**BETWEEN**

**KENNEDY KIPKIRUI TOO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant, Kennedy Kipkirui Too, appeared before the Chief Magistrate at Kericho charged with defilement, contrary to Section 8(1) as read with Section 8(4) of the Sexual Offence Act in that on the 15<sup>th</sup> June, 2017 at [Particulars Withheld] village Kericho County he intentionally and unlawfully caused his penis to penetrate the vagina of VC a child aged sixteen (16) years. In the alternative, the Appellant was charged with committing an indecent act with the said child contrary to Section 11(1) of the Sexual Offence Act.
2. After a full trial, the Appellant was convicted on the main count and sentenced to twenty (20) years imprisonment. Being dissatisfied with the outcome he preferred the present appeal on the basis of the grounds set out in the petition filed herein on 3<sup>rd</sup> May, 2019 in which he mainly complains that he was convicted and sentenced on evidence of the prosecution which was insufficient and that his defence was disregarded by the trial court.
3. At the hearing of the appeal the Appellant appeared in person and fully relied on his written submissions. He prayed that the appeal be allowed in its entirety.

The state/Respondent opposed the appeal through the learned prosecution counsel, Mr. Karanja on the basis of the grounds contained in their written submissions.

The state therefore urged this court, to dismiss the appeal and uphold the Appellant's conviction and sentence.



4. The duty of this court was to reconsider the evidence and draw its own conclusion bearing in mind that the trial court had the benefit of seeing and hearing the witness.

In that regard, the prosecution case was briefly that the child complainant (PW1) was at the material time a standard eight (8) pupil at [Particulars Withheld] Primary school and on the material date of the offence as she headed to the house of one Joyce Korir to pick vegetables she took shelter at the Appellants home to avoid being further rained on as it was raining on that day.

5. She (complainant) knew that she had taken shelter at a neighbour's home where she found the Appellant and his two minor children. She followed the children to an outside kitchen while the Appellant remained in the main house from where he sent her twice to the homestead's granary. On the second occasion the complainant declined to go to the granary and this prompted the Appellant to pull her to the granary where he defiled her.
6. Thereafter, the complainant returned to her home and reported the incident to her mother, NCC (PW3) who in turn reported to her father, JCC (PW2).

The father indicated that the complainant was born on 27<sup>th</sup> December, 2000 and produced a clinic card (P. exhibit 2) to confirm the same. The complainant mother (PW 3) also confirmed as much but later produced a birth certificate (P. Exhibit 3) indicating that the complainant was born on 27<sup>th</sup> December, 2004. She (PW3) said that the year 2004 was inserted by an assistant chief.

7. The complainant's father (Pw2) reported the matter to the police after having taken the complainant for medical examination at the Kericho District Hospital. A clinical officer at the hospital Robert Kipyegon Langat (Pw4) examined the complainant who appeared before him with a history of having been defiled by a person known to her. The police medical examination form (P3) indicated that she was fifteen (15) years old.
8. Upon examination the clinical officer concluded that there was evidence of a penetrative act thereby implying that the complainant was indeed defiled on the material date. The necessary investigations having been carried out by Cpl. Cynthia Bore (PW5) the Appellant was eventually arraigned in court for the offence of defilement.
9. In his defence, the Appellant denied the charge and implied that he was not at the alleged scene of the offence as he had gone to his grandmother's home at the material time and on his way from there to his home he was informed by a certain lady of an incident which had occurred at his home. On arrival home, he found a multitude of people who alleged that he had committed a crime. He was later pursued and arrested.
10. It was from all the foregoing evidence that the trial court concluded that the charges against the Appellant had been proved beyond reasonable doubt by the prosecution despite his alibi defence. The trial court found that the Appellant was identified as the offender by the complainant who was his neighbour and that her evidence was truthful and credible.
11. In this court's opinion, the evidence in its totality did not raise any or substantial dispute with regard to the occurrence of the offence and more so, that the complainant was actually sexually assaulted on the material date. Her age was at the material time placed at between thirteen (13) years and seventeen (17) years depending on which document was used as the beacon in determining her age.
12. The clinic card (P.exhibit 2) indicated that the complainant was born on 27<sup>th</sup> December, 2000. This date was confirmed by the complainant's parents (Pw2 and PW3) and it meant that the complainant was aged seventeen (17) years at the time of the offence. The birth certificate (P exhibit 3) indicated



that the complainant date of birth was 27<sup>th</sup> December, 2004, thereby placing her at the age of thirteen (13) years at the time of the offence.

13. According to the complainant's mother (Pw3) the year 2004 was a creation of and an assistant chief who was never called to testify and explain the variance of the complainant's date of birth in the clinic card and the birth certificate. As maybe deciphered from the evidence of the complainant's parents, the year 2004 as appears in the birth certificate was most likely than not a typographical. Nevertheless, the evidence did establish without dispute that the complainant was a child of less than eighteen (18) years as at the material time of the offence.
14. This would mean that the sexual assault committed against her was in the form of defilement a fact which remained largely undisputed and was in any event, established and proved by the complainant own evidence as corroborated by that of the clinical officer (Pw4). Thus, the ingredients of age and penetration which are key on charge of defilement were duly established and proved by the evidence of that prosecution.
15. The third ingredients of identification of the offender was most crucial and was indeed, the bone of contention. In that regard, the Appellant raised an alibi meaning that the prosecution had the obligation to disprove the same and not for the appellant to prove it even though it may be treated as an afterthought if raised belatedly or found to be lacking in credibility.
16. The Appellant alleged that he was at his grandmother's place at the material time of the offence but did not call the grandmother or any other witness to confirm as much. The fact that he was placed at the scene by the complainant whose evidence was found by the trial court to be the truth meant that his alibi was firmly discredited and disproved and rendered an afterthought. It was not necessary that the complainant's evidence of identification be corroborated by dint of Section 124 of the Evidence Act.
17. It is therefore the finding of this court that the prosecution evidence against the Appellant was sufficient and credible in establishing the material ingredients of defilement against the Appellant. The conviction by the trial court was therefore safe and sound and is hereby affirmed.
18. On the sentence of twenty (20) years imprisonment imposed by the trial court against the Appellant, it was lawful and in keeping with Section 8(4) of the Sexual Offence Act which provides that: -

“A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years”

However, given that the Appellant was a first offender and remorseful the twenty years' term was rather excessive and is hereby reduced to fifteen (15) years imprisonment.

19. Other than the alteration in the sentence, the appeal is hereby dismissed.

**J.R. KARANJAH**

**JUDGE.**

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF JUNE, 2025.**

Presence of:

Mr. Karanja state counsel

Mr. Simon Magwa court assistant

Appellant;- Present in person.

