



**Republic v Kajira (Sexual Offence 212 of 2019)
[2026] KEMC 1 (KLR) (15 January 2026) (Judgment)**

Neutral citation: [2026] KEMC 1 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
SEXUAL OFFENCE 212 OF 2019
PA NDEGE, SPM
JANUARY 15, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

ROY KIMULE KAJIRA ACCUSED

JUDGMENT

1. The accused person herein, Roy Kimule Kajira, was on 20/12/2019 charged with the offence of Defilement contrary to section 8(1) as read with 8(4), and Committing and Indecent Act with a Child contrary to section 11(1); all of the *Sexual Offences Act* No. 3 of 2006 (hereinafter, abbreviated as SOA).
2. The charges were read to the accused person, who denied in both counts that on 17th and 18th December, 2019 at an estate in Nakuru West sub-County within Nakuru County, he intentionally inserted his male organ namely penis into a female genital organ namely vagina of V.C. a child aged 16 years, which caused penetration. He also denied in the alternative charge that on the same dates and at the same place, he intentionally and unlawfully committed an indecent act with a child by touching the vagina of the same child with his penis.
3. The prosecution called 6 witnesses, including PW5, Kelvin Kutwa, whose testimony was however not completed. He was not cross-examined and was not able to present himself back to complete his testimony. As such his evidence is not reliable and has already been expunged from the records herein.
4. On the material day, PW2, E. C., the complainant's mother was in her house, while her children, including the complainant herein, PW1, V. C., were playing outside. PW1 later confirmed that they left with a friend of hers to go pluck maize cobs at a maize field. That on their way back, they met with the accused person who was known to them. That the accused asked them to accompany him to his house. That they proceeded to his house, and on the way, met an old man. That inside the house, the accused closed the door, removed her clothing including a panty. That the accused then removed his



penis and twice inserted it into her vagina. They spent in his house till the next day when she heard that her mother was looking for her.

5. PW2 confirmed that the complainant did not return back that day. That she met with Kevin who was then able to trace the complainant while at the accused person's house. They were thus able to trace the complainant while at the accused person's house. She then went with Kevin to report at the police station. The accused and the complainant were then arrested by police officers including PW3, NO. 62604 SGT Geoffrey Ngaira, and put in the cells.
6. The complainant was on the same morning taken to the hospital for examination. PW4, DR Njoroge Ruku, of Nairobi Women Hospital did the examination and concluded that there was evidence of penetration of the victim. He produced the Medical Examination (P3) Report, the Post Rape Care Form and the Treatment Notes as PEXH. Nos 2, 3 and 4, respectively.
7. While at the police station, the matter was extensively investigated by PW6, NO. 73126 IP Nancy Ayuma. A birth certificate produced herein as PEXH. NO.1 confirms that the complainant was born on 06/08/2003, proving that her age as at the time of the commission of the offence herein was 16 years 4 months.
8. The accused in his defence stated that on 18.12.2019, the day of the arrest, at around 10.00am, he was busy going on with his activities at Caro's Saw Mill, when some people came on a motor cycle. They included one Kevin. They requested him to get onto the motor-cycle so that they assist them investigate a theft incident at Kaptembwa. That they were also looking for a girl, the complainant herein. He denied knowing the complainant herein. They later demanded for some money from him. They nevertheless took him to the police station where he met a child while locked in the cells. He was booked in the cells where he spent till 19/12/2019. He was later charged with the present offence/s.

Issues, Burden And Standard Of Proof

9. It is trite law that the burden of proof is always on the prosecution to prove its case beyond reasonable doubt. The main issue for determination herein is thus a simple one, namely whether the prosecution has discharged this burden?
10. The offence herein is either Defilement or Indecent Act. Defilement has been defined in section 8 of the SOA thus: 'A person who commits an act which causes penetration with a child I guilty of an offence termed defilement'. Justice George Dulu, in *Jumaahiribaekomora Vrs Republic* (high Court Of Kenya At Garissa Criminal Appeal NO. 53 OF 2017, UR), at page 7, paragraph 9, held that in a defilement case, 3 elements are to be proved by the prosecution beyond reasonable doubt. They are firstly, the age of the complainant, secondly penetration, and thirdly the identity of the culprit.
11. Justice Majanja, in *Peter Mokami Nahashon Vrs Republic* [2014] e KLR, stated as follows on the offence of Defilement: -
 13. A person is said to have committed an act of defilement under section 8(1) of the *Sexual Offences Act* when the person commits an act which causes 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 (Emphasis supplied)
12. Indeed under section 2(1), SOA, penetration means the partial or complete insertion of the genital organ of a person into the genital organ of another person. Genital organs have been defined as the whole or part of male or female genital organs.



13. Section 2(1) of the same Act defines indecent act to mean: -
...unlawful intentional act which causes – (a) any contact between any part of the body of a person with the genital organs, breast or buttocks of another, but does not include any act that causes penetration; (b) exposure or display of any pornographic material to any person against his or her will.
14. In the alternative charge, the prosecution was just therefore supposed to prove to the same standards of beyond reasonable doubt that the defendant herein intentionally touched the vagina of the same complainant with his penis.
15. As noted herein, the burden of proof herein lies with the prosecution and going by how the case against the accused person herein proceeded in trial herein, and mainly the nature of the evidence adduced herein, I do not find any such burden that shifts to the defence except as the accused would have – which he did not – raised a defence under section 8(5) of the SOA.
16. The prosecution must therefore prove to the required standard of beyond reasonable doubt that the accused person herein committed the acts alleged in the charges and as elaborately defined and explained hereinabove.

Determination

17. The accused person was seen by the complainant herein while committing the act herein on her. PW2 and PW3 found the accused while with the complainant herein. I find the direct evidence of PW1 when considered and corroborated by the medical evidence of PW4, that the child victim had bruises and tears which were then fresh, to prove to the required standard that the victim herein was forcefully penetrated, by the accused person herein, and in a manner as witnessed by PW1.
18. The age of the complainant was proved vide the birth certificate, PEXH. NO.1, and confirmed to have been 16 years old at the time of the defilement. I thus find that all the essential ingredients or elements of the charges and the offences herein have been proved to the required standard of beyond reasonable doubt. I do not find any other evidence, material or fact that might make me doubt the evidence herein. This evidence is so watertight that it displaces the accused person's statement in defence which concentrated on the manner of his arrest and not the real issue on trial herein.
19. I thus do hereby find the accused person herein guilty as charged and consequently pursuant to the provisions of section 215 of the Criminal Procedure Code, do hereby convict the accused person herein of the offence of Defilement contrary to section 8(1) as read with section 8(4) of SOA

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS ...15TH... DAY OF.....JANUARY....., 2026.

A. P. NDEGE

SPM

In the presence of;

...Wakesho..... court interpreter

...Macharia..... present for prosecution

Accused person: Present

Victim/ guardian: n/a



Macharia: No previous records

Accused in Mitigation in Kiswahili: The court to consider my health or medical needs while meting out the sentence. I have also learnt a lot while in remand. The court to consider that while meting out the sentence. I have learnt a lot as can be seen in these certificates. Let me be put to good service to the community.

CT: I need not say much. The offence carries a minimum mandatory sentence. Because of the time spent in remand, I will consider the accused for the most minimum sentence provided. Accused to serve 15 years imprisonment.

