



**Kinyua v Republic (Criminal Appeal E116 of 2024)  
[2026] KEHC 504 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 504 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E116 OF 2024  
SM GITHINJI, J  
JANUARY 26, 2026**

**BETWEEN**

**DENNIS KIMATHI KINYUA ..... APPELLANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Dennis Kimathi Kinyua, the appellant herein, was charged in the lower court with a main count of defilement contrary to section 8 (1) as read with section 8 (3) of the [sexual offences Act](#) No. 3 of 2006.
2. The particulars of this offence are that on the diverse dates between 27<sup>th</sup> December, 2023 and 25<sup>th</sup> January, 2024 at Taita Location in Imenti South Sub-county within Meru County, the appellant intentionally caused his penis to penetrate the vagina of B.N a girl child aged 14 years old.
3. In the alternative, the appellant faced an offence of committing an indecent act with a child, contrary to section 11 (1) of the [sexual offences Act](#) No. 3 of 2006.
4. The particulars of this offence being that on the diverse dates between 27<sup>th</sup> December 2023 and 25<sup>th</sup> January 2024, at Taita Location in Imenti South Sub-county, the appellant intentionally touched the vagina of B.N a child aged 14 years with his penis.
5. The victim in this case, who offered her evidence as Pw-1, was born on 26<sup>th</sup> May 2009. Her birth certificate No. 9075971 was produced as an exhibit and indicates of the said date as her date of birth. At the time of the alleged offence on 27<sup>th</sup> December, 2023 she was therefore aged 14 years.
6. On 26/12/2023 the victim visited her sister Wendy Gacheri at Turkwel from Gatia. She spent the night there. The following day the sister looked for the appellant who had a motorcycle, to take the victim back home at Gatia. However, the appellant took the victim to his house to stay with her as a girlfriend. The two stayed together for a week. At night they used to share the bed. They had sex twice, where the



- appellant told the victim to remove her clothes of which she did. He likewise removed his and inserted his penis into her vagina. The appellant's mother however started abusing the victim's sister.
7. On 13/1/2024 their father asked Pw-2 why she did not want the victim to go back to school. Pw-2 told the father that she sent her home on 27/12/2023. A neighbour called Mutuma, told Pw-2 that he saw the victim washing utensils as the appellant's house. Pw-2 went for the victim at the appellant's house in Salem and found her together with the appellant. She then went and reported the matter at Nkubu Police Station on 25/1/2024.
  8. Pw-4 investigated the case. The victim was examined at Kanyakine Sub-county Hospital by Pw-3. She noted that her clothes were not torn and had no blood stains. Her hymen was broken and there was a whitish vaginal discharge. The hymen tear was however not flesh. The outer genitalia was normal. Her P-3 and PRC forms were thus filled. Pw-3 produced them as exhibits.
  9. The appellant in his defense stated that he was arrested in the morning and it was claimed that he had locked the complainant in his house. He alleged that he was not found with the complainant in the house. The motorcycle which he allegedly used to carry the complainant was not recovered. He claimed the complainant's birth certificate was not produced to ascertain her age. Upon arrest though requested to be taken to the hospital for examination, he was not taken. He was just discriminated upon. He as well stated other perceived weaknesses in the prosecution case.
  10. The trial court evaluated the evidence and found the appellant guilty of the offence in the main count. He was accordingly convicted of it and sentenced to serve 20 years imprisonment.
  11. Dissatisfied with the said conviction and sentence, he appealed to this court on the following grounds:-
    1. That penetration was not proved since the evidence of broken hymen is not prove of defilement.
    2. That the case against him was not proved beyond reasonable doubt by the prosecution.
    3. That his defense was not weighed.
  12. The appeal was canvassed by way of written submissions and both parties filed their respective submissions.
  13. As the first appellate court, I have considered the charge, evidence adduced in the lower court, the appellant's defense, judgment of the lower court, grounds of the appeal and submissions by each side.
  14. In a case of defilement, the prosecution should establish the following ingredients of the offence beyond reasonable doubt:
    1. Age of the complainant/victim who must be a child, that's below 18 years of age.
    2. Penetration; here even the slightest penetration would suffice for the offence.
    3. Proper identification of the culprit as the actual perpetrator.
  15. In regard to the age of the victim, a birth certificate was availed, No. 9075971 showing the victim was born on 26/5/2009.
  16. The offence allegedly took place between 27/12/2023 and 25/1/2024. At the said period, by simple calculations, the victim was aged 14 years old. In Republic –Vs- Francis Nyongesa and Another [1991] KLR 601 (CA) – The court held that age of the victim must be established, either by documentary evidence or credible oral testimony. Given that the birth certificate was produced in this case which



shows that the victim was a minor at the time of the alleged offence, the prosecution established the fact beyond reasonable doubt.

17. On penetration, the victim in her evidence stated she had sex with the appellant twice. In it, she undressed as well as the appellant who then inserted his penis into her vagina. Her evidence by description reveals there was penetration. The evidence of Pw-3 buttresses the fact as upon examination the hymen was broken and she had a whitish discharge from her vagina. The evidence when weighed together establishes that there was penetration of genital organs by genital organs. In the case of Republic -Vs- Peter Karanja and Another [2015] eKLR, the court held that the complainant's testimony coupled with medical findings was sufficient to infer penetration.
18. The absence of injuries by itself, does not automatically exclude penetration if credible evidence shows sexual intercourse occurred.
19. On identification of the perpetrator, he was well known to Pw-2, a fact of which he does not deny. He stayed with the victim for a whole week and she could not have therefore made a mistake of him. Pw-2 also went for the victim from his house where she was staying with him. The appellant given the evidence, could not have been mistaken for the real culprit.
20. The evidence shows that the appellant committed an unlawful act with a minor, in which consent is immaterial and not a defense.
21. His defense was more about submissions on perceived weaknesses in the prosecution case and was rightly dismissed by the trial court. Considering the weight of the prosecution evidence, the defense cannot be right.
22. On sentence, the victim was aged 14 years old. The law provide for a minimum sentence of 20 years imprisonment of which is he sentence meted against the appellant. The sentence is lawful and there's no cause to vary the same.
23. The bottom line is that the appeal lacks merit and is hereby dismissed.

**JUDGMENT READ AND SIGNED IN THE OPEN COURT THIS 26<sup>TH</sup> JANUARY, 2026.**

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**Hon. Justice Stephen Githinji**

In the presence of:-

Appellant – In Meru G. K. Prison

M/s Adhi for the State

