



REPUBLIC OF KENYA



**Rono v Republic (Criminal Appeal E077 of 2024)
[2025] KEHC 2431 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E077 OF 2024
DR KAVEDZA, J
MARCH 11, 2025**

BETWEEN

GIDEON KIPKORIR RONO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 8th July 2024 by Hon. M.W Murage (P.M) at Kibera Chief Magistrate's Court Criminal Case no. E091 of 2018 Republic vs Gideon Kipkorir Rono)

JUDGMENT

1. The appellant Gideon Kipkorir Rono was charged and after a full trial convicted for the offence of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve ten (10) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal, he raised the following main grounds:

The appellant challenged the totality of the prosecution's evidence against which he was convicted; the appellant complained of bias by the trial court: he argued that his strong defence was not considered; he further complained that the sentence was harsh and excessive. 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 analyze and re-evaluate the evidence that was before the trial court, and itself come to its own conclusions on that evidence without overlooking the findings of the trial court but bearing in mind that it never saw the witnesses testify.



4. The complainant a 14-year-old girl living with her mother in Langata, testified about an incident on 11 November 2018. Around 3 pm, she was at home when Baba Chero, a neighbour, arrived to repair their woofer. While working, he requested the house keys, which she did not have. He then demanded she remove her clothes; she refused, but he forcibly undressed her, removing his own trousers and shorts. Wearing a dress, tights, and top, she stated he pulled down her tights, lifted her dress, and assaulted her on the floor. She described the act as 'tabia mbaya' (bad behaviour), lasting 20 minutes, during which he held her in a hug, opened her legs, and touched her vagina with his hands and penis.
5. A neighbour interrupted, entering to fetch her for water drawing, causing the appellant to hide in a corner. He dressed and left after the neighbour departed. The complainant said he offered her money, though she was unsure why. Afterwards, she fetched water as the neighbour later informed her mother of the incident. The matter reached Langata Police Station, and she was taken to Nairobi Women's Hospital.
6. She revealed this was the third such incident, with similar incidents occurring when he borrowed a matchbox. She only testified about this third event. Previously unreported, she said she wouldn't have spoken without the neighbour's intervention. During the sexual assault, her sister was playing outside, and her mother was at work. She noted he held her hand and shoulders, causing no pain or bleeding. The neighbour glimpsed the appellant's head.
7. On cross-examination, she confirmed not reporting earlier incidents and said he never gave her money. On re-examination, she was unsure where her clothes went, recalling his instruction not to tell anyone and his use of hands during the sexual assault.
8. On 13 November 2018, PW2, the complainant's mother, was informed by a neighbour, Lucy, of an incident at her home. Lucy had visited while PW2 was at work to fetch PW1, the minor, to draw water. When the complainant did not respond, Lucy entered and saw a man hiding. Shortly after, the appellant left the house. PW2 asked her daughter, who identified the appellant, a familiar neighbour. PW2 reported the incident. During cross-examination, she confirmed knowing the appellant, a former boyfriend, and neighbour for a year.
9. PW3, John Njuguna, gave medical evidence on behalf of Faith Nyaga examined the complainant a 13-year-old minor on 13th November 2018 for reported sexual abuse by a neighbour. No bodily injuries were found, though the outer genitalia appeared normal. A broken, healed hymen and an old tag were noted, with no anal injury. The minor had a vaginal and urethral bacterial infection but no STIs. PW3 produced the PRC Form and P3 Forms. On cross-examination, he estimated the injuries were hours old, noting no sperm or abnormal discharge; the minor had changed clothes.
10. PW4, the investigating officer, stated the case was reported on 13th November 2018, with the offence occurring on 12 November 2018. The mother and daughter reported together. PW4 recorded statements and presented the minor's health card, confirming her birthdate as 7th January 2005, making her 13. On cross-examination, PW4 noted the minor's clothes were not submitted, as she had cleaned up post-incident. No animosity between the mother and the appellant was reported.
11. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on his defence.
12. The appellant testified that on 22nd November 2018, he lived with Rachael, his lover, and kept her radio at his house. She sent her child to retrieve it, and after a dispute about him speaking to other women, the minor returned the next day, reporting the radio was faulty. Around 3 pm, he went to fix it, finding the door open and the complainant's sister present. The next morning, police arrested him



for defiling the minor. He denied any relationship with the minor, claiming one with her mother, and said no one interrupted his repair work.

13. On cross-examination, he denied undressing and noted the minor knew him well, as he paid school fees for PW2's children. On re-examination, he admitted to differences with Rachael, the minor's mother.
14. The appeal was canvassed by way of written submissions which have been considered. Section 2 of the SOA defines an indecent act as: -
15. An unlawful intentional act which causes—
 - a. any contact between any part of the body of a person with the genital organs, breasts, or buttocks of another, but does not include an act that causes penetration;
 - b. exposure or display of any pornographic material to any person against his or her will;

Section 11(1) of the SOA states that Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

16. The first issue for determination is whether the complainant was a child at the time of the alleged offence. The complainant told the court that she was 14 years old. Additionally, the trial court considered the birth card produced in evidence by the investigating officer, which affirmed the complainant's date of birth as 7th January 2005. The complainant was therefore a child within the meaning of the law at the time of the alleged incident.
17. The second issue is whether the complainant was sexually assaulted as claimed. The child complainant clearly recalls the events of 11th November 2018. At around 3 pm, while at home, her neighbour, Baba Chero, came to fix their woofer. He asked for house keys, which she didn't have, then told her to undress. When she refused, he forcibly removed her clothes and sexually assaulted her. She testified he hugged her, opened her legs, touched her private parts, and penetrated her with his penis for about 20 minutes. A neighbour's arrival interrupted the act, prompting him to hide briefly before leaving. He later promised her money via Mpesa. The assault was reported after the neighbour told her mother, leading to police action and a medical exam. She knew the appellant well, having been defiled by him thrice before, and described the incident vividly.
18. The complainant's evidence did not therefore require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if the trial magistrate recorded reasons why it believed the child was telling the truth, which she did. Her demeanour during the trial was well documented, and the trial court found that there was no reason why she would lie. The trial court was therefore satisfied that the victim was telling the truth.
19. In his defence, the appellant maintained his innocence. His defence was disproved, discredited, and rendered a mere afterthought. I have come to the same conclusion.
20. This court on its own consideration of the evidence is satisfied that there was sufficient and credible evidence from the prosecution establishing not only the material ingredients of the offence of indecent act with a child but also, that the Appellant was the person responsible for the offence against the Child Complainant.
21. From the foregoing analysis, it is my view that the Appellant's grounds of appeal are unsustainable. The Appellant's conviction by the trial court was sound and proper and is hereby upheld. This appeal must therefore fail on conviction.



22. On the sentence, section 11(1) provides that Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.
23. The prosecution proved their case beyond reasonable doubt; hence, the trial court, imposed the sentence of 10 years' imprisonment. For this reason, I hold that the sentence imposed was lawful and I see no reason to interfere.
24. The upshot of the above analysis is that the appellant's appeal is dismissed in its entirety for lack of merit.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

