



**Nyakora v Republic (Criminal Appeal 49 & E125 of 2024
(Consolidated)) [2025] KEHC 4496 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 49 & E125 OF 2024 (CONSOLIDATED)**

DR KAVEDZA, J

APRIL 7, 2025

BETWEEN

GIDEON NYAKORA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. I.M Kabuya (SPM) on 24th October 2024 at Kibera Chief Magistrates'
Court Sexual Offences Case No. E021 of 2024 Republic vs Gideon Nyakora)*

JUDGMENT

1. The appellant Gideon Nyakora was charged and after a full trial convicted for the offence of indecent act with a child contrary to Section 11 of the *Sexual Offences Act*, No 3 of 2006. He was sentenced to serve fifteen (15) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal, the appellant challenged 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 that was before the trial court, and itself come to its own 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 complainant gave sworn evidence after a voir dire examination. The N.K. (PW1), testified that on the afternoon in question, she visited the appellant's house known to her as "Baba Dorcas" looking for her friend Dorcas, who wasn't there. The appellant called her inside, lowered her undergarments, and rubbed his hand against her vagina, causing her to scream. Her sister, N.M. (PW2), heard the scream, rushed in, and found PW1 on the appellant's lap with her stockings down and his trousers lowered.



- Suspecting an intent to defile PW1, PW2 pulled her away, adjusted her clothing, and they left. Dorcas' mother later arrived, and after the appellant spoke to her in vernacular, she angrily warned PW1 never to return. The sisters then reported the incident to their mother, PK (PW3), at her workplace.
5. PW3 confirmed her daughters approached her at work, where PW2 recounted the appellant's actions. She reported it to Kangemi Police Station, where CPL Kirika (PW5) investigated, recorded witness statements, and arrested the appellant.
 6. John Njuguna (PW4), a Clinical Officer at Nairobi Women's Hospital, examined PW1 that evening at 9:50 pm, finding her genitalia normal and hymen intact, indicating attempted defilement without penetration. He produced the P3, PRC, and GVRC forms as exhibits. In cross-examination, PW1 clarified Dorcas was 2 or 3 years old and visits were routine. PW2 noted the appellant's door was ajar, contradicting her statement that both were fully dressed. PW3 reported defilement but was unsure of the final charges.
 7. The appellant in his defence, claimed he was briefly home at 5:30 pm to drop off his 3-year-old daughter, leaving when his wife returned, and denied the allegations. His landlord, Margaret Nduta (DW2), saw PW1 playing happily that evening and doubted the incident, alleging fabrication after PW3 refused an examination of PW1.
 8. Section 2 of the SOA defines an indecent act as: -

An unlawful intentional act which causes—
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;
exposure or display of any pornographic material to any person against his or her will.
 9. The prosecution's case against the appellant, pursuant to Section 11 of the Sexual Offences Act, No 3 of 2006, is predicated upon two distinct legal ingredients: the complainant's age, establishing her status as a child, and the commission of an indecent act involving the touching of her genitals.
 10. As to the first ingredient, N.K. (PW1) gave sworn evidence that she was 7 years of age at the material time, a fact uncontroverted in cross-examination and implicitly corroborated by her mother, PK (PW3), who identified PW1 as her daughter without disputing her minority. This satisfies the statutory definition of a child under Kenyan law, being a person below 18 years.
 11. Regarding the second ingredient, PW1 testified that the appellant, known to her as "Baba Dorcas," induced her entry into his dwelling under false pretences, whereupon he intentionally lowered her undergarments and applied his hand to her vagina, an act of physical contact inherently indecent and unlawful. This was witnessed by N.M. (PW2), who, upon hearing PW1's scream, entered and observed PW1 seated upon the appellant's lap, her stockings lowered and his trousers similarly displaced, evincing intent. Clinical Officer
 12. John Njuguna (PW4) provided medical corroboration, tendering the P3, PRC, and GVRC forms, which, whilst noting an intact hymen, aligned with an attempted sexual assault. The trial court considered the appellant's defence, but it did not dislodge the corroborated prosecution evidence. The prosecution thus discharged its burden, proving beyond reasonable doubt both the complainant's minority and the appellant's indecent act. It is my finding that the conviction was proper and is affirmed.
 13. The appellant was sentenced to fifteen (15) years imprisonment. During sentencing, the court considered his mitigation, and that he was a first offender. The Act provides for a minimum sentence



of ten (10) years. In my mind, I have no doubt that the sentence imposed was legal and not harsh or manifestly excessive.

14. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 7TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

