



REPUBLIC OF KENYA



**Kahawa v Republic (Criminal Appeal E126 of 2024)
[2025] KEHC 5585 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E126 OF 2024**

DR KAVEDZA, J

MAY 6, 2025

BETWEEN

ROBERTSON ONZERE KAHAWA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. R. Kitagwa (SRM) at Kibera Chief Magistrates' Court
Sexual Offense Case No. 88 of 2018 R v Robertson Onzere Kahawa)*

JUDGMENT

1. The Appellant 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 as the alternative count. After a full trial, the Subordinate Court convicted him of the latter offence. He was sentenced to serve ten (10) years imprisonment.
2. Aggrieved, he filed an appeal challenging the totality of the prosecution's evidence against which he was convicted. He contended that the sentence imposed by the trial court was improper as the learned trial magistrate failed to apply discretion in her sentencing. He urged the court to quash the 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 which was before the trial court and 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 prosecution availed four (4) witnesses in support of their case. PW2, RN, the complainant, provided her testimony after a voir dire examination. She stated that on the day in question while conversing with her mother, she revealed that the appellant would lock her inside his house and



- insert his finger into her vagina whenever she went to retrieve their house keys from him. She further explained that she had been too scared to disclose this earlier due to the appellant's threats to kill her.
5. As discussed in the Kenya Judiciary Criminal Procedure Bench Book 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
 - “ 94. No corroboration is required if the evidence of the child is sworn (Kibangeny arap Kolil v R 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (Oloo v R (2009) KLR).
 95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, *Evidence Act*). The reasons for the court's satisfaction must be recorded in the proceedings (Isaac Nyoro Kimita v R Court of Appeal at Nairobi Criminal Appeal No. 187 of 2009; Julius Kiunga M'birithia v R High Court at Meru Criminal Appeal No. 111 of 2011).
 96. The evidence of a child, sworn or unsworn, received under section 19 of the *Oaths and Statutory Declarations Act* is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), CoK”
 6. PW1, RMK, the complainant's mother, corroborated her daughter's testimony. She stated that upon hearing her daughter's account, she immediately took her to the hospital for examination. Afterwards, they went to Kilimani Police Station, where they recorded their statements. She confirmed that her daughter was born on 6th August 2009.
 7. PW3, PC Dorine Wakhungu, the investigating officer, testified that she recorded statements from the complainant and her mother. She reviewed the complainant's PRC form from Nairobi Women's Hospital and issued a P3 form. She then arrested the appellant, interrogated him, and charged him with the offence. Additionally, she presented the complainant's birth certificate in court.
 8. PW4, John Njuguna, a clinical officer at Nairobi Women's Hospital, produced the complainant's PRC and P3 forms. The medical records showed no physical or vaginal injuries.
 9. At the close of the prosecution's case, the trial court determined that a prima facie case had been established. When called to present his defence, the appellant denied committing the offence.
 10. Section 2 of the Sexual Offences *Act No. 3 of 2006* defines an indecent act as:-

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;
 11. The prosecution's case centred on the allegation that the appellant sexually assaulted the complainant by inserting his fingers into her vagina. The complainant, PW2, testified that the appellant exploited her vulnerability when she visited his house to collect house keys, which her mother, PW1, had entrusted to him. She recounted how the appellant locked her inside, removed her clothing, and



proceeded to insert his finger into her vagina. Despite her young age, the complainant delivered a clear and detailed account of the incident during both examination-in-chief and cross-examination, maintaining her composure and consistency throughout the proceedings. Her testimony was unwavering, demonstrating a level of clarity and resolve remarkable for a child of her age.

12. Although PW4, the clinical officer from Nairobi Women's Hospital, reported that the medical examination revealed no physical or vaginal injuries, this did not undermine the strength of the prosecution's case. The complainant's compelling testimony was supported by corroborating evidence from her mother, PW1, who confirmed the sequence of events and the immediate actions taken, including rushing her daughter to the hospital and reporting the matter to Kilimani Police Station.
13. Additionally, PW3, PC Dorine Wakhungu, the investigating officer, provided further substantiation through her account of the investigation, including the issuance of a P3 form and the arrest of the appellant. The collective weight of this evidence satisfied the prosecution's burden of proof beyond reasonable doubt, establishing the appellant's guilt despite the absence of physical injuries.
14. Regarding the complainant's age, PW3 presented her birth certificate in court, confirming that she was born on 6th August 2009, making her nine years old at the time of the offence. This evidence was undisputed and critical in establishing the context of the crime.
15. After a thorough analysis of the prosecution's case, the complainant's testimony, the corroborative evidence, and the appellant's denial, the trial court's conviction was well-founded. Accordingly, the conviction is upheld as the prosecution successfully proved the appellant's guilt.
16. On sentence, the appellant was sentenced to serve 10 years imprisonment. During sentencing, the court considered his mitigation, and that he was a first offender. The court noted that the appellant was not remorseful. In my mind, I have no doubt that the sentence imposed was legal and not harsh or manifestly excessive.
17. The upshot of the above analysis is that the appeal lacks merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant absent

Mr. Mutuma for the Respondent

Tonny Court Assistant

