



REPUBLIC OF KENYA



KENYA LAW
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**Aruya v Republic (Criminal Appeal E025 of 2025)
[2025] KEHC 10088 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E025 OF 2025**

DR KAVEDZA, J

JULY 15, 2025

BETWEEN

FELIX MANOTI ARUYA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 20th February 2025 at Kibera Chief Magistrate's Court, Sexual offence case No. 69 of 2020, Republic v Felix Manoti Aruya before Hon. Z. Abdul (PM))

JUDGMENT

1. The appellant was charged and, after a full trial, convicted by the Subordinate Court for committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. He was sentenced to ten years' imprisonment. On Count II, he was convicted of assault causing actual bodily harm contrary to section 251 of the *Penal Code* and sentenced to serve three (3) years' imprisonment. The sentences were ordered to run concurrently.
2. Aggrieved, he filed an appeal challenging both conviction and sentence. He contested the adequacy of the prosecution's evidence and argued that the charge sheet was defective and incurable. He urged the court to quash the conviction and set aside the sentence.
3. The preliminary issue raised was that the charge sheet was defective. The appellant argued that the charge sheet was fatally defective as the particulars of the alternative count indicated that he used his penis and not fingers to penetrate the vagina of the complainant which was the evidence advanced by the prosecution.
4. While the appellant argues that the defect on the charges was fatal, it is important to consider substantively the import and effect of the same and whether prejudice was occasioned.



5. The Appellant contends that the charge sheet relied on by the trial court to convict him was defective. In determining whether a charge sheet is defective or not, the Court of Appeal in *Sigilani -vs- Republic* (2004) 2 KLR, 480 held as follows: -

“The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence”.

6. On the other hand, Section 134 of the *Criminal Procedure Code* provides for what the components/ ingredients of the charge sheet constitute as follows: -

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged”.

7. Looking at the record and entire evidence one cannot say that the appellant did not understand the nature of the charges against him. It is quite clear from his cross-examination questions to the prosecution witnesses that he understood he was accused of having alleged inappropriate sexual contact with the complainant.

8. Furthermore, the appellant never raised the issue or contested in trial, and from the record and evidence, the prosecution sought to prove the charges of defilement or in the alternative indecent act. In the premises, no prejudice was occasioned. The ground of appeal fails.

9. This is the first appellate court, and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa established the duty of the first appellate court. It is to analyse and re-evaluate the evidence that 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 and the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.

10. The complainant, PW1, gave unsworn evidence following a voir dire examination. She testified that on the material day, the appellant called her to his house, locked the door, and gagged her mouth by inserting a vest and securing it with cellotape. He then tied her legs with a rope, placed her on the bed, and inserted his fingers into her private parts. PW1 pointed to her crotch while describing this. Afterwards, he released her but threatened to kill her if she told anyone. She told her mother the next day because she was afraid.

11. PW1 added that the appellant lowered her trousers and underwear to her knees before tying her legs. He also burnt her behind her left arm with hot chewing gum melted on a spoon. The police visited on 16th July 2020, and she showed them where the appellant's friend lived. She stated she often saw the appellant visiting their neighbour. PW1 reported the incident to her mother because she had been advised to speak up if anyone undressed her. In cross-examination, she stated she was playing with Mercy when the appellant, accompanied by another unknown person, took her to 'kina Toti's house', where Toti's mother was at work and Toti was playing.

12. PW2, the complainant's mother, testified that PW1 disclosed the incident a day later. On examining her, she found no soiled undergarments or other injuries but noted a burn on PW1's left arm caused by hot chewing gum. She identified the appellant in court and produced PW1's birth certificate. In cross-examination, PW2 confirmed she was at work during the incident and denied approaching Toti's



- parents before reporting to the police. She did not see the rope, cellotape, or spoon but confirmed the burn injury. PW1 told her what happened while she was bathing her, which she only did on Saturdays. PW1 was examined and treated at Nairobi Hospital.
13. PW3, a clinician at Nairobi Women's Hospital, produced the minor's medical records. Examination showed a healing bruise on her left arm; the hymen and anus were intact with no infection detected.
 14. PW4, the Investigating Officer, testified that the complainant, with another, reported a sexual assault. Her account supported PW1 and PW2's evidence. She added that the appellant was later spotted at Aleki's home by the complainant and arrested. She also produced the birth certificate showing the complainant was born on 15th February 2010.
 15. In his defence, the appellant testified that on the material day, he was in Kawangware with his friend Brian, then visited Alex at Naivasha Road and later spent the night in Pipeline. While Alex was preparing lunch, two plain-clothes police officers arrived and arrested him, taking him to Kabete Police Station. He stated that at the station he was informed he had defiled a minor whom he claimed not to know and denied ever seeing. He denied the charges. He further denied knowing the complainant and said she came with the police and her mother to the house where he was arrested.
 16. DW2 testified that on the material day, he was preparing lunch for his siblings when police officers arrived, armed with handcuffs, and arrested the appellant without explaining why. He denied there was any rope in the house or that the appellant ever tied up the complainant or dragged her inside. He also denied having a double-decker bed and maintained the appellant did not sexually assault anyone, as his family members were always present.
 17. On cross-examination, DW2 confirmed that the appellant frequently visited their house but insisted they had no double-decker and that he did not know the complainant.
 18. The appeal was canvassed by way of written submissions which have been duly considered which have been duly considered and there is no need to rehash.
 19. The appellant was convicted for the offence of committing an indecent act with a child which provides as follows:
 - " 11.
 - (1) 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.
 20. The first element of this offence requires an indecent act with a child. The complainant testified that the appellant caused her to lie on a bed, lowered her trousers and undergarments to her knees, bound her legs, and inserted his fingers into her vagina. Her account was consistent and credible, establishing the occurrence of an indecent act.
 21. The second element requires that the act be committed intentionally and unlawfully. The complainant's evidence demonstrated that the appellant's actions were deliberate, with no lawful justification. The clinician (PW3) found no visible injuries, noting normal genitalia, but medical evidence confirmed that partial penetration may not cause hymenal rupture or visible trauma, supporting the complainant's account of the act.



22. The third element requires that the complainant be a child. The complainant's age was confirmed as 15 years, per her birth certificate dated 15th February 2010, satisfying the definition of a child under the law. The appellant's identity was established by recognition, as the complainant had seen him visiting a neighbour. The appellant's defence was considered and found to lack merit. The conviction on the alternative to Count I is upheld as proper.
23. On the second count, the appellant was charged with the offence of assault causing bodily harm contrary to section 251 of the *Penal Code*. The provision of the law reads as follows:
- “Any person who commits an assault occasioning actual bodily harm Is guilty of a misdemeanor and is liable to imprisonment for five years”
24. The essential elements of the offence of assault causing actual bodily harm are;
- i. Assaulting the complainant or victim
 - ii. Occasioning actual bodily harm
25. I have re-examined the prosecution's evidence and find that the complainant's (PW2) account of the assault is well supported. PW2 was clear that it was the appellant who burnt her with hot chewing gum. Medical evidence shows a healed scar on her left hand, which was visible during the trial and consistent with her account.
26. The complainant identified the appellant by recognition, ruling out mistaken identity. The evidence firmly establishes that the appellant committed the assault on PW2, leaving no doubt that the complainant was indeed harmed.
27. Although the appellant advanced a disputing the complainant's account, it was found to be a mere denial and did not discredit the prosecution's case. The medical records corroborate the assault, and PW2's testimony remains credible and consistent. The trial court correctly found the evidence reliable. The conviction for assault was therefore sound and is upheld.
28. On sentence, the appellant was sentenced to 10 years imprisonment on the alternative charge and 3 years imprisonment in count II. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.
29. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.
- Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JULY 2025

D. KAVEDZA

JUDGE

In the presence of:

Mr. Khalwale for the Appellant

Mr. Mongare for the Respondent

Ms. Karimi Court Assistant

