



**Dindi v Republic (Criminal Appeal 41 of 2023)  
[2024] KEHC 6861 (KLR) (10 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6861 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 41 OF 2023  
DR KAVEDZA, J  
JUNE 10, 2024**

**BETWEEN**

**CHELSEA AYAKO DINDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. R. Kitwaga (PM) on 19th April 2023, at Kibera Chief Magistrate's  
Court Sexual Offences Case no. E0101 of 2020 Republic v Chelsea Ayako Dindi)*

**JUDGMENT**

1. The appellant was convicted for the offence of indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006. She was sentenced to serve 3 years imprisonment. Being aggrieved, she filed an appeal challenging her conviction and sentence.
2. In the petition of appeal dated 8<sup>th</sup> June 2023, the appellant raised 10 grounds which have been coalized as follows: She challenged the totality of the prosecution's evidence against which she was convicted. She urged the court to quash his conviction and set aside the sentence.
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 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. PW1, FLI testified that her daughter the complainant was born on 26<sup>th</sup> December 2000. Towards the end of 2016, the complainant frequently left home, claiming to visit her friend Chelsea, the appellant. In May 2017, PW1 cancelled flight led her to discover the complainant and other children, including appellant, drunk in the complainant's room. She later admitted to drug use and a sexual relationship with the appellant. Subsequent tests confirmed drug use, prompting counselling for the complainant.



- Despite temporary improvement, in December 2017, romantic photos of the complainant and the appellant were found, leading PW1 to report to the police.
5. PW1 testified that the appellant had a negative influence on the complainant, causing secrecy and behavioural changes. PW1 emphasized her daughter's trauma and ongoing counselling. Confiscated items, including codeine bottles, were handed to the police, asserting she acted to protect her from the appellant's undue influence.
  6. PW2, NB, testified that she was born on December 26, 2000. She first saw the appellant on September 11, 2016, at a night event for teenagers in Lavington. Although she had heard of Chelsea, this was their first meeting. Intrigued, NB found Chelsea on Snapchat and added her as a friend. They began conversing in February 2017 via Snapchat. On February 14, 2017, while texting at school, Chelsea offered to pick NB up and take her to her house. NB accepted and Chelsea arrived in a taxi with chocolates and flowers, which NB found surprising but sweet.
  7. PW2 also testified that a few days later, the appellant invited her to her house again and picked her up from school. They sat on the accused's bed, where the accused kissed her and asked her to be her girlfriend, meaning they would be in a relationship. Although shocked because they had not known each other long, PW2 accepted without thinking it through. PW1 added that the appellant tried touching her but she moved away as it seemed to be sexual and no one had tried to touch her that way before. She also testified that the appellant wanted to touch her vagina. That she felt bad about moving away from the accused. That they continued to speak. That they also continued to meet there after. That she would sometime walk to the appellant's house or she would pick her up, and when they got indoors, they would kiss, the appellant would undress and touch her. It then progressed for the appellant using her fingers and mouth to penetrate her. That she used her mouth to lick her vagina and that this would happen about twice, thrice or four times a week and then it got to a point where she would go there every day.
  8. PW2 added that she often found the appellant alone at home, smoking marijuana and drinking codeine mixed with soda. Out of curiosity, she tried these substances, which made her feel drowsy. The drugs usually preceded sexual acts. PW2 sometimes stayed overnight at the appellant's house and other times at her mother's. She described the relationship as manipulative, noting the appellant used her age to dominate and isolate her from her family. This led to behavioural issues and lies to her mother, culminating in her being sent to a rehabilitation centre for codeine and MDMA addiction.
  9. During cross-examination, she acknowledged her sister's support and that her mother exploded upon discovering her drunk friends. PW2 admitted hiding her sexual relationship and drug use from her family, blaming the appellant for encouraging bad behaviour, resulting in poor grades and anger.
  10. PW3, Dr. Joseph Omolo, a clinical psychologist, testified that he was consulted to counsel PW2 in July 2017 due to declining grades. He diagnosed PW2 with emotional disturbances, anxiety, lack of sleep, and suicidal tendencies, caused by drug abuse (bhang and codeine). He noted PW2 reported bisexual feelings at age 16 and was put on medication and psychotherapy. PW2 became an outpatient in July 2017 and began rehabilitation in January 2018. Despite progress, PW2 still experienced depression and paranoia. During cross-examination, he stated that PW2 derived pleasure from her sexual experiences despite societal discomfort with her bisexuality.
  11. PW4, No 106854 PC Elisha Chirchir testified that he received a laptop and phone for analysis on January 11, 2018. The laptop was inaccessible due to a password, but he retrieved chats, SMS messages, images, and videos from the phone on February 28, 2018, which were relevant to the case. During cross-examination, he admitted lacking formal training in data protection and confirmed that the retrieved texts between the appellant and PW2 had sexual undertones. He stated that no warrant was needed for



device search, and he followed legal procedures for a fair trial. On re-exam, he reiterated his compliance with legal standards and clarified he did not know the ownership of the analysed device.

12. PW5, Chief Inspector Yunus detailed his involvement in the case, which began with PW1 reporting PW2's abnormal behaviour and suspected drug use on December 25, 2017. After confiscating drug paraphernalia and initiating an investigation, explicit pictures exchanged between PW2 and the accused were discovered in January 2018, leading to further scrutiny. PW5 collected electronic devices belonging to PW2 for analysis, resulting in charges under the Sexual Offences Act against the appellant, with approval from the ODPP. Despite facing technological challenges and delays in correspondence with the ODPP, PW5 maintained his commitment to prosecuting the appellant for unlawful relations with PW2, emphasizing that his actions were based on the evidence available at the time.
13. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on her defence. DWI testified that her interaction with PW2 began in February 2017 after receiving a complimentary message from PW2 on Snapchat. Their relationship developed, with PW2 sharing personal struggles, including bullying and family issues. DWI claimed to have warned PW2 about the dangers of drug use, as PW2 allegedly consumed cough syrup, Benylin, and marijuana. DWI stated she was arrested on October 20, 2020, at her home in Kilimani. She maintained that she never used her fingers to penetrate PW2's vagina nor her tongue to penetrate the complainant's vagina.
14. The appeal was canvassed by way of written submissions which have been considered. Section 2 of the SOA 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;
15. The first issue for determination is whether the complainant was a child at the time of the alleged offence. The complainant's mother (PW 1) told the court that the complainant was born on 26<sup>th</sup> December 2000 and she was therefore 16 years old. Additionally, the trial court considered the birth certificate produced in evidence by the investigating officer PW5, which affirmed PW2's date of birth as 26<sup>th</sup> December 2000. The complainant was therefore a child within the meaning of the law.
16. The question I must now grapple with is whether the prosecution adduced sufficient evidence to prove that the case against the appellant sexually assaulted the child victim as alleged. The complainant adduced evidence how she met the appellant on 11<sup>th</sup> December 2016 in Lavington at a social function. She told the court that although she had heard about the appellant, she was meeting her for the first time on the material day. She further told the court that she engaged the appellant on social media through the appellant's Snapchat handle.
17. Soon thereafter, they started communicating through Snapchat. She stated that on 14<sup>th</sup> February 2017 the appellant bought for her flowers and chocolates and paid for her a taxi to Merlin Court near Geko car wash. The appellant invited her to her bedroom and tried to touch her vagina but she resisted. Their meetings became more frequent and the appellant started by kissing her, followed by taking off her clothes and touching her. This progressed to the appellant taking off her pants and underwear and using her finger and mouth to lick her vagina. This would happen two to three times a week. Besides that, the appellant would give the complainant, marijuana and codeine syrup which she would mix



- with soda. After ingesting the drugs, she would become drowsy and end up spending the night at the appellant's house.
18. Their relationship blossomed into a 'love affair' that persisted from February to December 2017 when the complainant was taken for drug rehabilitation. The court was shown nude photographs of the two, extracts of chats between the complainant's and the appellant's numbers (+25478xxxxxx and +254707xxxxxx). From the extract at page 22, first table, the complainant messaged the appellant stating that she could not stop thinking about the appellant and that she had erotic feelings about the her. The phone was produced as an exhibit.
  19. She further explained that their relationship was sexual and that the appellant would kiss and insert fingers in her vagina. She stated that this happened two to three times weekly.
  20. From the narration above, the complainant clearly knew the appellant very well. They attended the same school. She described the appellant's house vividly. Evidence produced by the investigating officer revealed communication between the appellant and the complainant. The relationship was not short lived but lasted a year.
  21. 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 she 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.
  22. In her defence, the appellant maintained her innocence that she was the complainant's friend and their relationship was not sexual. Her defence was disproved, discredited and rendered a mere afterthought. I have come to the same conclusion.
  23. 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.
  24. 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.
  25. With regard to the sentence, the complainant was 16 years whereas the appellant was 19 years old. The appellant was therefore three years older and a senior to the complainant at school. As indicated herein above, it is the complainant who initiated communication with the appellant through social media. In fact, she told the court that she had heard about the appellant and was curious about her. However, the Appellant ought to have known better than to allow herself to be baited by a minor and ended up engaging in sexual activity with the minor. For this reason, I hold that the sentence imposed was lawful.
  26. That notwithstanding, sentences are intended, *inter alia*, to punish an offender for the wrongdoing, they also aim to rehabilitate offenders to renounce their criminal tendencies and become law-abiding citizens. I have no doubt that the sentence imposed by the trial court in this case was lawful but, considering that the appellant was a first offender and a high school student when the offence was committed, I am satisfied that the sentence was harsh and manifestly excessive.
  27. For the above reason, I hereby set aside the sentence of three (3) years imprisonment imposed by the trial court and substitute it with an order of probation for twelve (12) months. The appellant is directed to report to the Probation Officer at Kibra Sub – County within seven days from the date hereof.



It is so ordered.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF JUNE 2024**

**D. KAVEDZA**

**JUDGE**

In the presence of:-

Mr. Walukwe and Kendi for the Appellant

Appellant Present

Ms. Tumaini Wafula for the Respondent

Joy Court Assistant

