



**Nyanchama v Republic (Criminal Appeal 31 of 2024)
[2024] KEHC 15766 (KLR) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 31 OF 2024
DR KAVEDZA, J
DECEMBER 13, 2024**

BETWEEN

DENNIS MUTURI NYANCHAMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
on 25th January 2024 at Kibera Chief Magistrate's Court Sexual
offence case No. E130 of 2022 Republic vs Dennis Muturi Nyanchama)*

JUDGMENT

1. The Appellant was charged and after full trial convicted by the Subordinate Court of the offence of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act* No. 3 of 2006 (the Act). The particulars were that on diverse dates between July 2021 and 17th December 2022 within Dagoretti sub-county, he unlawfully and intentionally touched the breasts and buttocks of SW a child aged 14 years with his hands.
2. The appellant was sentenced to serve 10 years imprisonment. Being dissatisfied, he has filed an appeal against the conviction and sentence in line with his petition of appeal.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal of 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. With the above, I now proceed to determine the substance of the appeal. In his Petition of Appeal and written submissions, the appellant has raised multiple grounds of appeal. The appellant complains that the prosecution failed to prove its case beyond reasonable doubt. He complains that the key ingredients



- of the offence were not established and also that there were inconsistencies and the contradictions in the face of the record.
5. The thrust of the grounds of appeal is that the prosecution failed to prove its case beyond reasonable doubt.
 6. 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;
 7. From the facts outlined in the charge sheet, the appellant fell within the first part of the definition of an indecent act.
 8. Evidence of the indecent act was given by the victim, (PW1) who testified that she was 14 years old. She told the court that she lived with her mother and siblings. She recalled that in June 2022 she lived at her grandmother's place when her father opened her door and called her outside. She then took her hand to where the cows were tied up. He told her to hug and kiss him and she declined. He then tried to undress her and started touching her breasts while standing behind her. When she started crying, came to her rescue the appellant attacked her and warned them not to tell anyone.
 9. The complainant averred that it was usual for the appellant to touch her vagina and kiss her. In addition that her mother knew about it and ensured that she stayed with her aunt when schools closed.
 10. She further recounted that on 17th December 2022, when her mother was away at church, her father came home and gave her Kshs. 400. He then went and smoked bhang. Afterwards, he started touching her buttocks. After he stopped, she called her pastor and informed him what had happened. The appellant threatened to beat her and she ran away and met Mrs. Kemunto her teacher and informed her what had happened. The teacher led her to the church where she met, her mother, the pastor, and her aunt. When confronted, the appellant denied ever touching her.
 11. PW1's testimony did not require corroboration under the proviso to Section 124 of the *Evidence Act* (Chapter 80, Laws of Kenya) if there were reasons to believe the child was truthful. The trial magistrate observed that PW1 testified with the innocence of a child, and her account of the events remained consistent throughout. I also recognise that PW1's testimony was delivered with the innocence of a child and demonstrated a clear understanding of the events. Therefore, I find that no corroborating evidence was necessary to establish the facts.
 12. Regarding additional evidence presented by the prosecution, PW2, the complainant's mother, produced the complainant's birth certificate which indicated that she was born on 24th June 2008 and was 14 years old. She said that the appellant was her husband and corroborated the complainant's evidence that she had found the appellant touching her on several occasions. She said that the appellant was her husband and she corroborated the evidence of her daughter. She said that she used to go with her daughter everywhere to prevent the same from happening. The complainant's age was therefore proved beyond reasonable doubt.
 13. PW3 SW stated that on 27/5/22 the appellant's daughter called her and informed her that her father was touching her. She was the one who insisted that they report to Kabete Police Station she noted that many people had tried to intervene to no avail. They reported a second time at Kabete when the



appellant became very aggressive and was even chasing the complainant in broad daylight and even following her school.

14. PW4, Sergeant Akevere of Kabete Police Station said that he recalled the events of 17/12/22 when the mother of the complainant reported the case. He went with his colleague to the appellant's house and they arrested him. On being cross-examined, he said that they arrested him at 7 pm and nobody asked him for money.
15. The clinical officer John Njuguna of Nairobi Hospital produced the documents prepared by his colleague Mike Mutua. He produced the medical documents for SWM's treatment on 6/6/22 for attempted defilement. She had no injuries on her body and genitals. In addition, no STDs or infections were observed. The PRC form and P3 form were produced as exhibits.
16. In his defence, the appellant testified that he was in Kiambu from 5/6/21 to 21/11/2022 for work and did not visit Waithaka during that period. He stated that he had a wife in Kiambu and another wife in Waithaka. He described PW3 as his first wife, with whom he had lived in Kiambu for 17 years, although they had no children together. He claimed that when he began living with PW2 on 17/12/22, she arrived with a police officer, leading to his arrest. He alleged that they attempted to negotiate and demanded money, which he refused to pay.
17. He denied touching any child or living with one, asserting that the complainant had been coached by her aunt and that the case was fabricated against him. He claimed the situation stemmed from a love rivalry between PW2 and PW3. During cross-examination, he maintained that the two are sisters and that PW3 was the actual complainant who did not want him to live with PW2.
18. From the record, the complainant, a 14-year-old, provided clear and articulate testimony about ongoing abuse that lasted for a year. Despite being aware of the situation, her mother and aunt failed to protect her. On one occasion, the mother caught the appellant in the act, but after he attacked her, she chose to remain silent. There was no reason why a 14-year-old would frame her father.
19. PW2 corroborated the evidence by stating that she caught the appellant and the complainant behind the house, with the appellant attempting to undress the child. Despite this, PW2, described as a weak mother, failed to report the incident, choosing instead to accompany her daughter everywhere to protect her. Additional corroboration came from PW3, Sarah Wanjiku, who reported that PW1 was being inappropriately touched by her father. PW3 informed PW2 of the incident, but PW2 still failed to report it to the police.
20. Additionally, it was the pastor and teacher, not the mother, who caused the appellant's arrest. Therefore, the claim that the child was influenced by the mother is unfounded. The defence is merely a denial. For the foregoing reasons, I have come to the same conclusion as the learned trial magistrate. Taken together, the evidence proved an indecent act beyond reasonable doubt. The conviction is affirmed.
21. The trial court sentenced the appellant to serve 10 years imprisonment. During sentencing, the court considered his mitigation, and that he was a first offender. In addition, he deserved a deterrent sentence to rehabilitate him. In my mind, I have no doubt that the sentence imposed was legal and not harsh or manifestly excessive.
22. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed. The sentence shall run from 17th December 2022, the date of the appellant's arrest pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.



JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 13TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant present

Mburugu for the Respondent

Achode Court Assistant

