



**Sammy v Republic (Criminal Appeal E082 of 2025)
[2025] KEHC 14683 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E082 OF 2025
DR KAVEDZA, J
OCTOBER 21, 2025**

BETWEEN

EMMANUEL MWANIKI SAMMY APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 29th day of May 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E079 of 2024 Republic vs Emmanuel Mwaniki Sammy)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of Indecent Act with a child contrary to section 11(1) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on the 17th June 2024 at (particulars withheld) area within Nairobi County intentionally and unlawfully allowed his hands to get into contact with a female organ namely (vagina) of CM a girl aged 16 years. He was sentenced to serve ten (10) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his 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 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. PW1, testified after a voire dire examination. She stated that on the material day at 9 am she went to the toilet and as she closed the door behind her the appellant person 'Manu' touched it. She inquired what he wanted and told her to keep quiet as they would be heard. She complied and he locked them



inside. He then lifted her skirt and inserted his fingers into her vagina. During the incident, a neighbor approached to use the toilet, prompting the appellant to become uneasy and check outside. Taking advantage of the moment, the complainant managed to slip out and return to the house, where she dressed up.

5. Before leaving for work, the appellant allegedly handed a handwritten note to the complainant's sister instructing that, should anyone inquire about the incident in the toilet, the complainant was to deny it. Later that afternoon, the neighbour's daughter informed the complainant's mother that the appellant and the complainant had locked themselves in the toilet earlier that morning. When questioned, the complainant confirmed the occurrence, prompting her mother to report the matter at Muthangari Police Station. The complainant was referred to Nairobi Women's Hospital for medical examination and later recorded a statement.
6. A few weeks later, police officers traced and arrested the appellant while he was relocating to a new residence. The complainant concluded her testimony by stating that the appellant, whom she referred to as Manu, had been her boyfriend for two years and that he loved her. She further disclosed that she had been defiled once while in Grade 3 but did not report the incident.
7. During cross-examination, she stated that her parents were at work and she was with her sister at the time. Although she admitted to dating the appellant, she maintained that he only touched her and did not have sexual intercourse with her. She added that she did not scream because he warned her to keep quiet. On re-examination, she clarified that the appellant touched her private parts and breasts.
8. PW2, John Njuguna, a clinical officer at Nairobi Women's Hospital, examined PW1 and observed a torn hymen and a laceration at the six o'clock position, consistent with blunt trauma such as penetration.
9. PW3, LN, the complainant's mother, testified that her daughter was 15 years old and produced her birth certificate to confirm the same. She stated that on the material day, when she came home for lunch, her neighbour's daughter, informed her that the appellant and the complainant had locked themselves inside the toilet. Upon confronting the complainant, she admitted that the appellant had only inserted his fingers into her.
10. PW3, immediately called her husband, and together they reported the matter to Muthangari Police Station. The complainant was referred to Nairobi Women's Hospital for medical examination and later recorded her statement. She further testified that she later saw the appellant moving houses, confronted him about the incident, and he admitted to the act before police officers arrived and arrested him.
11. During cross-examination, Lydia stated that the appellant had been their good neighbour for a long time. She maintained that she first learnt about the incident through her Joy a neighbour, and upon confronting her daughter, she confirmed that the appellant had only inserted his fingers.
12. PW4, Inspector Mutuma, the investigating officer at Muthangari Police Station, corroborated the testimonies of both the complainant and her mother. He explained that the neighbour, Joy, declined to record a statement as she did not wish to be involved. He acknowledged that Joy was the appellant's ex-girlfriend and might have acted out of jealousy, but he nevertheless relied on the complainant's evidence in reaching his conclusion that the appellant was culpable.
13. In his defence, the appellant, gave sworn evidence, denying the charge. He stated that he was familiar with the complainant and her family, as they lived opposite each other. On the material day, he claimed he saw the complainant inside her house while on his way to the bathroom but denied meeting her in the washrooms. He alleged that Joy, his ex-girlfriend, fabricated the allegations out of malice following



- a grudge. During cross-examination, he maintained that he had no issues with the complainant or her family but had fallen out with Joy, although he never reported the matter to the police.
14. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
 15. 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.
 16. Further, Section 11(1) of the SOA states that:

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.
 17. The prosecution's case against the appellant was anchored on two essential elements under Section 11 of the *Sexual Offences Act*, No. 3 of 2006. The first element concerned proof of the complainant's age. The complainant testified that she was sixteen years old as of 17th June 2024. Her mother, PW3, corroborated this by confirming that the complainant was born on 1st February 2008, making her sixteen at the time of the alleged offence. To further support this evidence, PW3 produced the complainant's birth certificate, which was admitted in court as an exhibit. The authenticity of this document was not disputed by the defence. This evidence conclusively established that the complainant was a minor within the meaning of the law, thereby invoking the special protections accorded to children under the *Sexual Offences Act*.
 18. Secondly, on the evidence of committing an indecent act, the complainant testified that the appellant locked them inside the toilet, he then proceeded to lift her skirt before inserting his fingers in the victim's vagina.
 19. Medical evidence adduced by the clinical officer at Nairobi Women's Hospital, indicated that the complainant's hymen was torn and a laceration was observed at the 6 o'clock position, findings consistent with the complainant's account of digital penetration. The officer further explained that such injuries are typically caused by blunt trauma, including penetration by a finger, thus lending medical support to the complainant's version of events. The appellant was later traced and arrested, and the complainant immediately identified him as the perpetrator.
 20. Having considered the totality of the evidence, I find that the complainant's testimony was consistent, credible, and corroborated by both medical findings and the circumstances surrounding the incident. The appellant's defence, alleging fabrication by a former girlfriend, was duly considered but found unpersuasive in light of the overwhelming prosecution evidence.
 21. 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.
 22. The appellant was sentenced to ten (10) years imprisonment. In imposing this sentence, the trial court considered his mitigation, noting that he was a first offender. Nonetheless, under Section 11 of the *Sexual Offences Act*, No. 3 of 2006, the prescribed minimum sentence for the offence of committing



an indecent act with a child is ten years imprisonment. The sentence imposed was lawful and is hereby affirmed.

23. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF OCTOBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

