



**Korir v Republic (Criminal Appeal E095 of 2025)
[2025] KEHC 18289 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18289 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E095 OF 2025
DR KAVEDZA, J
DECEMBER 9, 2025**

BETWEEN

BENARD CHERUIYOT KORIR APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. C. Njagi (PM) on 9th June 2025 at Kibera Chief Magistrates' court S.O. Case No. E136 of 2024 Republic vs Benard Chruiyot Korir)

JUDGMENT

1. The Appellant was charged and after full trial convicted before the Subordinate Court on two counts of the offence of sexual assault contrary to section 5(1)(a)(ii) as read with section 5(2) of the [Sexual Offences Act](#) No. 3 of 2006. He was sentenced to serve ten (10) years imprisonment on each count to run concurrently from the date of arrest.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal dated 21st June 2025, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He complained that the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.
3. The appeal was canvassed by way of written submissions which I have duly considered.
4. 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 analyze and re-evaluate the evidence which 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.



5. The offence of sexual assault is created by Section 5 of the *Sexual Offences Act* which provides that:

“(1) Any person who unlawfully:

- (a) penetrates the genital organs of another person with—
 - (i) any part of the body of another or that person; or
 - (ii) an object manipulated by another or that person except where such penetration is carried out for proper and professional hygienic or medical purposes;
- (b) manipulates any part of his or her body or the body of another person so as to cause penetration of the genital organ into or by any part of the other person’s body, is guilty of an offence termed sexual assault.”

6. The Court of Appeal in the case of *John Irungu V Republic*, [2016] eKLR pronounced itself on the essential ingredients of the offence of sexual assault as follows:

“... Thus, for purposes of sexual assault, the penetration is not limited to penetration of genitals by genitals. It extends to penetration of the victim’s genital organs by any part of the body of the perpetrator of the offence, or of any other person or even by objects manipulated for that purpose.”

- 7. From the foregoing, it is clear that in order to establish the offence, the prosecution must prove that there was penetration into the genital organs of the victim by any part of the body of the person accused of the offence or any other person or objects manipulated by the accused person for that purpose.
- 8. The essential elements of the offence therefore are, proof of penetration and positive identification of the assailant.
- 9. In this case, the prosecution tendered evidence that on 30th October 2024 the two complainants, PW1 aged 7 and PW2 aged 7 were playing together in Kangemi. The appellant, a neighbour known to them as “Benard”, enticed them into his single-roomed house. Once inside, he closed the door, bound their hands and gagged their mouths with white cellotape. He lifted their clothes, removed their underwear and penetrated their vaginas using his fingers causing both children considerable pain. The children were unable to scream because of the gags. A neighbour heard muffled sounds, intervened, and the children were released.
- 10. Upon returning home, both girls immediately complained of genital pain to their respective guardians. PW1 informed her aunt JK (PW5) while showering and later her mother JA (PW3).
- 11. PW2 told her father BM (PW4). The mothers and guardians promptly reported the matter, confronted the appellant who reacted aggressively, and took the children for medical examination.
- 12. Clinical Officer John Njuguna (PW6) examined them the following day. Upon examination, PW1 had vaginal cuts, bruises and tenderness consistent with forceful penetration, while PW2, though showing no fresh external injuries, had an absent hymen with a history consistent with penetration. All P3, PRC and treatment notes were produced in evidence.
- 13. Both children positively identified the appellant in court as the neighbour who had sexually assaulted them. Their evidence was consistent, given in an age-appropriate manner, and was corroborated by the first complaint to guardians, the medical findings, and the fact that the appellant was traced and arrested shortly afterwards.



14. In his defence, the appellant denied knowing the children or the incident. He claimed that he was confronted by two angry women on the material date but simply returned home to prepare for his night-shift work. He asserted that his sister-in-law MA (DW3) was always at home in their one-roomed house and that the alleged acts could not have occurred undetected. His brother KG (DW2) and sister-in-law confirmed the small size of the house and that the men worked night shifts, but neither witness was present at the material time on 30th October 2024.
15. The trial court found the children's evidence credible, cogent and sufficiently corroborated by the medical evidence and prompt complaints.
16. The defence of total denial and alibi was rejected as neither plausible nor capable of raising reasonable doubt in the face of the strong prosecution case. The appellant was accordingly convicted on both counts of sexual assault on a child. The evidence amply established the ages of the complainants, the acts of digital penetration, and the identity of the appellant as the perpetrator beyond reasonable doubt.
17. As this is a first appeal, the court has re evaluated the evidence on record regarding the ages of the complainants. PW3, the mother of PW2, testified that PW2 was born on 1 June 2017 and was therefore seven (7) years old at the time the offence was committed, although no birth certificate was produced. In respect of PW1, her birth certificate was produced showing that she was born on 12 January 2019 and was five (5) years old at the time of the offence. They were therefore children under the law.
18. This court has also re-evaluated the evidence on identification and penetration and is satisfied that it was the appellant who committed the offence. The appellant's defence was duly considered by the trial court and rightly rejected as a mere denial. I arrive at the same conclusion and find that the prosecution proved its case beyond reasonable doubt. The conviction for sexual assault on both counts is accordingly affirmed.
19. On the sentence, section 5(2) provides that a person who commits an offence of sexual assault is liable to imprisonment for a term of not less than ten (10) years which may be enhanced to life imprisonment.
20. In this case, the trial court considered the appellant's mitigation, his status as a first offender and exercised discretion in imposing a sentence of ten years on each count to run concurrently. I see no reason to interfere.
21. 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 9TH DAY OF DECEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant absent

Mr. Mutuma for the Respondent

Karimi Court Assistant.

