



**Wanjiku v Republic (Criminal Appeal 011 of 2026)
[2026] KEHC 1637 (KLR) (18 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 011 OF 2026
DR KAVEDZA, J
FEBRUARY 18, 2026**

BETWEEN

KELVIN NJUGUNA WANJIKU APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 3rd December 2025 by Hon. C. M. Njagi (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E064 of 2024 Republic vs Kelvin Njuguna Wanjiku)

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 particulars were that on the 31st Day of May, 2024 at [particulars withheld] village in Mutuini Area Dagoretti Sub-County within Nairobi County, the appellant intentionally and unlawfully committed indecent act by touching the breast of M.W.N a child aged 11 years old. He was sentenced to serve fifteen (15) 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.
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. The minor (PW1) testified that on 31st May 2024, she and her two siblings went to the home of the appellant, their neighbour, to watch television. They sat together, but the appellant moved closer to her. He touched her breasts, buttocks, and vagina, inserting his fingers into her vagina. He recorded



- a video while kissing her cheeks and trying to cover her mouth. She did not report the incident immediately and went home to sleep.
5. She had borrowed the appellant's phone to watch a movie. Her mother later discovered the video, questioned her, and the minor disclosed what had happened. She was then taken to Nairobi Women's Hospital.
 6. In cross-examination, PW1 confirmed the touching and digital penetration. She did not scream because her parents are strict. Her siblings witnessed the events and told their mother; Kamau also informed the mother.
 7. PW2, RNW (the minor's mother), stated she was at home that day. The minor came wanting to show pictures to her father. PW2 saw the minor lying on the appellant's chest and kissing him; her daughter Michelle questioned if it was wrong. When PW2 asked for the phone to send pictures, Kamau reported that the appellant had touched PW1's breasts.
 8. PW2 questioned PW1, who initially denied but later admitted the appellant touched her breasts and inserted fingers into her vagina. PW1 also said he tried to have sex with her, but Kamau interrupted. PW2 took the child to hospital. She confirmed the appellant was their neighbour and the children often visited him.
 9. In cross-examination, PW2 said she was shocked upon hearing the account from MWM and Kamau, then arranged the medical examination.
 10. PW4, John Njuguna, a clinician at Nairobi Women's Hospital, produced medical records. The minor, brought by her mother, was calm during examination, with no physical injuries or sexually transmitted diseases. He noted that indecent touching does not always cause visible marks or injuries.
 11. PW3, PC Brenda Muthui, the investigating officer from Mutuini Police Station, corroborated PW1 and PW2's accounts. She stated the appellant had deleted pictures from the phone, which was seized for forensic analysis.
 12. PW5, Chief Inspector Sammy Ndungu of the National Forensic Laboratory, analysed the appellant's phone. Photographs were extracted, copied to DVD, and a certificate of the process produced. He presented specific photos linked to the offence of committing an indecent act with a child. In cross-examination, he stated that editing or photoshopping would alter metadata and pixel resolution, indicating the tools used.
 13. In his defence, the appellant stated that on the material day he was arrested and accused of the allegation herein. He was arrested and taken to Mutuini Police Station and charged with the offence in court. He disputed the evidence adduced by the prosecution.
 14. During cross-examination, he states the fabrication are as a result of failed relationship with PW2. He alleges the PW2 anted a relationship with him, which he refused as she was married. He also alleges that Muthoni coached the child to lie and they've had small issues at the plot with PW2.
 15. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
 16. Section 11(1) of the *Sexual Offences Act* provides 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 case involves an allegation of an indecent act with a child, contrary to section 11(1) of the [Sexual Offences Act](#) in Kenya. The complainant, PW1, a minor whose stated age was medically assessed by a clinician at Mbagathi District Hospital as approximately 11-12 years, satisfies the legal definition of a child under the relevant statutes.
18. PW1 provided sworn testimony following a voir dire examination, detailing the events of 31 May 2024. She recounted visiting the appellant's home, their neighbour, with her two siblings to watch television. Initially seated together, the appellant repositioned himself beside her and proceeded to touch her breasts, buttocks, and vagina, including digital penetration. He also recorded a video while kissing her cheeks and attempting to silence her. PW1 did not immediately disclose the incident, citing fear of her strict parents, and returned home to sleep. She had borrowed the appellant's phone to watch a movie, which later became pivotal evidence. In cross-examination, PW1 reaffirmed the details of the assault, explaining her silence and noting that her siblings, including Kamau, witnessed the events and informed their mother.
19. Corroborating PW1's account, PW2, the minor's mother RNW, testified that on the same day, while at home, PW1 attempted to show pictures to her father. PW2 observed images of PW1 lying on the appellant's chest and kissing him, prompting questions from another child. When PW2 requested the phone to send pictures, Kamau disclosed the appellant's touching of PW1's breasts. Upon interrogation, PW1 initially denied but eventually confessed to the indecent touching and penetration with his fingers, adding that the appellant had attempted intercourse but was interrupted by Kamau.
20. PW2, shocked by the revelations from multiple sources including MWM and Kamau, promptly took PW1 to Nairobi Women's Hospital for examination. She confirmed the appellant's status as a neighbour and the children's frequent visits to his home.
21. Medical evidence from PW4, clinician John Njugua at Nairobi Women's Hospital, revealed no physical injuries or sexually transmitted infections during PW1's examination, where she appeared calm. He explained that indecent touching often leaves no visible marks, which aligns with the nature of the alleged offence and does not negate the occurrence.
22. The investigating officer, PW3 PC Brenda Muthui from Mutuini Police Station, corroborated the testimonies of PW1 and PW2. She noted that the appellant had deleted incriminating pictures from his phone, which was subsequently seized and sent for forensic analysis, underscoring attempts to conceal evidence.
23. Forensic evidence plays a central role in linking the appellant directly to the offence. PW5, Chief Inspector Sammy Ndungu from the National Forensic Laboratory, conducted a detailed analysis of the appellant's phone. Using specialised tools, his team extracted deleted photographs, compiled them onto a DVD, and produced a certificate outlining the extraction process.
24. Specific images recovered depicted actions consistent with the indecent act described by PW1, including the kissing and close physical contact. In cross-examination, PW5 emphasised the integrity of the evidence: any photoshopping or editing would alter the metadata and pixel resolution, revealing the tools used. No such alterations were detected, confirming the authenticity of the photos and their origin from the appellant's device. This digital forensic linkage irrefutably ties the appellant to the scene and the acts, as the images were captured on his phone during the incident.
25. In his defence, the appellant denied the allegations, claiming unsubstantiated coaching of PW1 by PW2. However, this lacked credibility and failed to discredit PW1's consistent and detailed testimony. Under section 124 of the [Evidence Act](#) (Chapter 80, Laws of Kenya), the trial court deemed PW1 truthful, providing reasoned grounds that obviated the need for further corroboration. The



prosecution's cumulative evidence, eyewitness accounts, medical insights, and forensic digital proof, sufficiently proved the commission of the indecent act and the appellant's guilt. Accordingly, the conviction is proper and upheld.

26. The appellant was sentenced to fifteen (15) years' imprisonment. In imposing sentence, the trial court considered the pre-sentence report, the appellant's mitigation, the period already spent in custody and the fact that he was a first offender. The applicable law prescribes a minimum custodial sentence of ten (10) years.
27. The record does not disclose any aggravating circumstances to justify a sentence above the statutory minimum, nor did the trial magistrate give reasons for departing from the minimum threshold set by law. In the absence of such justification, the sentence imposed cannot be said to be proportionate.
28. The sentence of fifteen years imprisonment is substituted with a sentence of ten (10) years imprisonment to run from 3rd June 2024, the date of this arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY 2026.

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi for the Respondent.

