



**EO alias K v Republic (Criminal Appeal E078 of 2024)  
[2025] KEHC 4938 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4938 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E078 OF 2024  
DR KAVEDZA, J  
APRIL 28, 2025**

**BETWEEN**

**EO ALIAS K ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered  
by Hon. M. Kabuya (SPM) delivered in Chief Magistrates' Court  
(Kibera) S.O. Case No. E107 of 2023 on the 25th day of July 2024)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for the offence of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve twenty (20) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal, he raised the following main grounds: The appellant challenged the totality of the prosecution's evidence against which he was convicted; he further complained that the sentence was harsh and excessive. 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 analyze 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. PW2 – DA, the Complainant a minor, gave sworn testimony stating that on a Monday, her father, the appellant, placed his “dudu” on her vagina, pointing to the area. She testified that this occurred multiple times, causing her pain. DA. disclosed the incidents to her mother, teacher, and friend, identifying the



- appellant as the perpetrator. During cross-examination, she confirmed the acts took place on a bed, reiterated the pain experienced, and affirmed the appellant's identity as the offender.
5. PW3 the Mother of PW2 testified that she typically left for work in the morning, returning at 5 p.m., leaving the complainant with the appellant after school. She recalled an incident where the appellant "disciplined" DA by pinching her nose with pliers.
  6. On 25 September 2023, noting DA's withdrawn behaviour, PW3 asked her teacher to intervene. The teacher later relayed DA's disclosure of repeated defilement by her father. PW3 reported the matter to the chief, but the appellant denied the allegations. A week later, PW3 sought medical attention for DA at Tabitha Medical Clinic, which referred them to Nairobi Women's Hospital. PW3 denied fabricating the case due to marital discord. During cross-examination, she acknowledged no visible physical injuries but maintained her belief in the offence, denying any coaching of DA. On re-examination, she cited DA's fearful state as the initial concern, with the teacher first learning of the offence.
  7. PW1 John Njuguna, Nairobi Women's Hospital testified that he examined the complainant on 31st October 2023, PW1 examined DA, who presented with a history of incest by her father. DA appeared calm with no physical injuries or genital discharge. The examination revealed a healed penetrative trauma, with no hymen present. PW1 produced the GVRC, PRC, and P3 forms as prosecution exhibits. During cross-examination, he noted that the hymen's tears could result from accidental trauma and confirmed no blood-stained clothes were presented.
  8. PW4 Naomi, a School Administrator from [particulars withheld] Junior Academy, testified that DA, following a teacher's report, disclosed that the appellant inserted his penis into her vagina every evening. PW4 noted a foul smell from DA for days. Under cross-examination, she denied influencing DA's account or fabricating the case.
  9. PW5 Lilian Opiyo, Clinical Officer, Tabitha Clinic examined DA, who reported incest by her father. Scars were observed on DA's vaginal wall, with no hymen or spermatozoa present, and a bacterial infection was noted. PW5 concluded defilement had occurred and produced a referral note and lab report. During cross-examination, she maintained her findings despite discrepancies with Nairobi Women's Hospital's report, suggesting possible penetration.
  10. PW6 – DA's Teacher corroborated PW3's testimony, stating DA disclosed that her father touched her vagina and instructed her not to tell her mother. PW6 reported this to the administration, who informed PW3. When confronted with DA's repeated disclosure in the appellant's presence, he denied the allegations, attributing them to marital issues. During cross-examination, PW6 denied influencing DA.
  11. PW7 PC Eunice Kagendo, Investigating Officer testified that on 3rd October 2023, PW7 recorded statements from DA and PW3, confirming defilement by the appellant. DA was withdrawn during interrogation but reiterated the appellant's actions. PW7 produced DA's birth certificate.
  12. In his defence, DW1, the appellant, confirmed DA as his biological daughter and denied ever defiling or viewing her lustfully. He questioned why PW3, who bathed DA, noticed no signs of abuse. He admitted to marital conflicts, noting PW3 reported him to the chief for irresponsibility and phone obsession. DW1 alleged PW3 fabricated the case, claiming she threatened to expose his actions. He recounted PW3 returning with police during supper, blaming her entirely. Under cross-examination, he maintained that PW3 coached DA to lie and denied observing DA's withdrawal or causing harm.
  13. DW2 SO, Appellant's Nephew testified that PW3 reported the appellant's failure to provide, prompting him to arrange a reconciliation meeting that never occurred. PW3 then reported the appellant. DW2 stated that neighbours observed no unusual behaviour in the family.



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. Also, 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.
16. This court must determine whether the prosecution adduced sufficient evidence to prove the appellant's commission of an indecent act with the child complainant, DA, as alleged.
17. The prosecution established key elements of the offence. The complainant's age, six years, was confirmed by her birth certificate (Exhibit 5), satisfying the legal definition of a child. The appellant, her biological father, was unequivocally identified, corroborated by the same exhibit.
18. DA's sworn testimony was consistent and credible, detailing repeated acts by the appellant placing his penis on her vagina, causing pain. She maintained this account under cross-examination and disclosed the abuse to her mother (PW3), teacher (PW6), and friend, bolstering reliability. Corroborative evidence included PW3's observation of DA's withdrawn behaviour and PW6's account of DA's disclosure that the appellant touched her and forbade her from telling her mother. The investigating officer (PW7) confirmed DA's consistent allegations.
19. Medical evidence supported prior abuse. PW5, from Tabitha Clinic, noted vaginal scarring, an absent hymen, and a bacterial infection, consistent with healed penetrative trauma. PW1, from Nairobi Women's Hospital, acknowledged potential prior trauma despite no fresh injuries.
20. The appellant's defence, denying the allegations and alleging coaching by PW3, lacked credibility and evidence, failing to counter DA's detailed testimony, medical findings, or multiple disclosures. Under section 124 of the *Evidence Act* (Chapter 80, Laws of Kenya), the trial court, finding DA truthful with recorded reasons, required no further corroboration. This court finds the prosecution's evidence sufficient and credible, establishing the offence of an indecent act with a child under section 11(1) and the appellant's culpability.
21. The appellant's grounds of appeal are unsustainable. The trial court's conviction is upheld, and the appeal on conviction fails.
22. On sentence, the trial court sentenced the appellant to twenty (20) years imprisonment. Section 11(1) of the *Sexual Offences Act* mandates a minimum of ten years' imprisonment. The trial court, lawfully exercising discretion, considered the appellant's role as DA's father and protector as an aggravating factor. The sentence is deemed lawful and proportionate. I therefore find no reason to intervene.
23. In the premises, the appeal is dismissed in its entirety for lacking in merit.
- Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL 2025**

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**D. KAVEDZA**



## **JUDGE**

In the presence of:

Appellant Present

Mr. Chebii for the Respondent

Tonny Court Assistant

