



**Juma v Republic (Criminal Appeal E058 of 2024)  
[2025] KEHC 7492 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7492 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E058 OF 2024  
AN ONGERI, J  
MAY 30, 2025**

**BETWEEN**

**CLAYSTEM JUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence of Hon. D. Wangeci (SPM) in Wundanyi Sexual Offence Case No. E009 of 2024 delivered on 17th December 2024)*

**JUDGMENT**

1. The Appellant was sentenced to 10 years imprisonment 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.
2. The particulars of the charge were that on 24<sup>th</sup> October 2023 at around 1300hours at Mwatate Location at Mwatate Sub County within Taita Taveta County, the Appellant intentionally touched the breasts and buttocks of M. M. a girl with his hands against her will.
3. The Appellant denied the charge. The prosecution called 4 witnesses.
4. The prosecution evidence in summary was that on the material day M.M, a girl aged 15 years had gone to buy bone soup for her father when she met the Appellant along the road.
5. The Appellant started calling her pet names. She decided to start running to avoid the Appellant.
6. The complainant said that the Appellant ran after her and touched her shoulder. He slid his hand under her T-shirt and touched her breasts. He also touched her buttocks.
7. The complainant was able to free herself and she went back home crying and reported to her father (PW2).



8. The complainant's father called the Appellant on phone and sought an explanation and he also reported the matter to the police.
9. The complainant was escorted to Mwatate Sub-County Hospital. No injuries were noted.
10. The Appellant was arrested and charged with the offence of Indecent Act with a child.
11. In his defence, the Appellant stated that he returned home at noon, went to sleep. He was woken up at 4p.m with allegations that he had raped a girl.
12. The Appellant called his father (DW2) who said the Appellant was with him at 4p.m at home on the material day.
13. The Appellant also called DW3 a boda boda rider who said he learnt of the incident from the Appellant's father at 3p.m. DW3 told the court what he heard.
14. The trial court found the Appellant guilty as charged and sentenced him to 10 years imprisonment.
15. The Appellant has appealed against both conviction and sentence on the following grounds:-
  - i. That the learned Magistrate erred in law and facts by failing to appreciate that there was a gross violation of the Appellant's rights as constitutionally provided contrary to Article 25(c) and 50(2)(a), (b), (g), (h) and (j) of the Constitution of Kenya, 2010 occasioning a miscarriage of justice.
  - ii. That the learned Magistrate erred in failing to consider that the critical elements of indecency in light of the conflicting evidence hence unproved occasioning a prejudice.
  - iii. That the learned Magistrate erred in law and facts by failing to consider that the charges as preferred were incurably defective since the evidence adduced related to none of the offences preferred again occasioning a serious prejudice.
  - iv. That the trial court erred in matters of law and facts in not putting into consideration that the instant matters record was replete with material contradictions or discrepancies capable of unsettling the verdict as arrived at.
  - v. That the trial court again failed to appreciate that the case was not proved to the required standards as in law.
  - vi. That may this court be pleased to furnish me with the true copies of the trial court proceedings to enable me select some more strong grounds.
16. The parties filed written submissions on the appeal as follows:- the appellant submitted that he was convicted on the testimony of a single witness.
17. The appellant further argued that the complainant herein alleged that the incident happened on a public road yet she did not call any witnesses to corroborate the same. He added that the complainant testified that he chased her and if that was the case there would have been witnesses as it would have raised alarm.
18. The appellant submitted that birth certificate that was produced at trial indicated that the complainant was born on 3<sup>rd</sup> July 2005 and the incident occurred on 24<sup>th</sup> October 2023.
19. That one can therefore infer that at the time of the incident the complainant was above the age of 18 years. The trial court however went ahead to convict the appellant on the basis that the complainant was 15 years.



20. The prosecution alternatively submitted that the complainant, PW1 testified that PW2 sent her to Landi Centre to purchase bone soup on his behalf.
21. That upon purchasing the same whilst returning home she encountered the appellant who began calling her pet names. She attempted to run away but the appellant overwhelmed her and pushed his hands under PW1's t-shirt and eventually touched her breasts against her will.
22. The prosecution submitted that the evidence that was submitted during trial placed the appellant at the crime scene on the material date, properly identified the appellant and established that the appellant committed the crime.
23. This being a first appeal, the duty of the first appellate court is as set out in the case of *Okeno =Versus= Republic* which held that;

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya vs Republic (1957) EA. (336)* and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M Ruwala v R (1957) EA 570*). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters vs Sunday Post [1958] EA 424*.”

24. The issues for determination in this appeal are as follows:-
  - i. Whether the prosecution proved the charge of Indecent Act with a child.
  - ii. Whether the Appellant was positively identified.
  - iii. Whether the sentence was excessive.
25. On the issue as to whether the offence of indecent assault was proved, the said offence has the following elements:-
26. Having carefully considered the appeal, the evidence on record, and the submissions by both parties, this court makes the following determination:
27. That the prosecution proved beyond reasonable doubt that the Appellant committed an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*.
28. I find that there is evidence that the Appellant touched the complainant on her breasts and buttocks.
29. The complainant's testimony was consistent, credible, and corroborated by her prompt report to her father (PW2) and the subsequent police action.
30. The fact that the incident occurred in a public place does not negate the offence, as the law does not require eyewitnesses for sexual offences, given their often private and sudden nature.
31. The complainant's age was sufficiently established by the birth certificate, confirming she was a minor at the time of the offence.
32. The Appellant's defence of alibi was properly rejected by the trial court as it was unsupported by credible evidence.



33. The alleged contradictions in the prosecution's case were minor and did not undermine the core of the charge.
34. The Appellant was positively identified as the perpetrator, and the trial court correctly assessed the credibility of the witnesses.
35. Regarding the sentence, the 10-year imprisonment term is lawful and commensurate with the gravity of the offence under Section 11(1) of the *Sexual Offences Act*.
36. I find that the sentence is neither excessive nor harsh, considering the violation of the minor's bodily integrity and the psychological impact of such acts on victims.
37. Consequently, the appeal lacks merit. The conviction is upheld, and the sentence of 10 years' imprisonment is affirmed.
38. The Appellant shall serve the full term as imposed by the trial court.

**DATED, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF MAY, 2025 IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent

