



**JTN alias Uncle J v Republic (Criminal Appeal E141 of 2024)
[2025] KEHC 7055 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E141 OF 2024**

DR KAVEDZA, J

MAY 27, 2025

BETWEEN

JTN ALIAS UNCLE J APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 31st October 2024 by Hon. C.M Njagi (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E087 of 2024 Republic vs JTN alias Uncle J)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of attempted defilement contrary to section 9(1) as read with 9(2) of the *Sexual Offences Act* No 3 of 2006. He was sentenced to serve thirty (30) years imprisonment to run from to run from 29th June 2024.
2. Being aggrieved, he filed an appeal challenging the totality of the prosecution's evidence against which he was convicted, stating that his rights to fair trial and legal representation were undermined.
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 prosecution availed six (6) witnesses in support of their case. PW4, PM the complainant gave an unsworn testimony following a voir dire examination. She averred that on the material day while he was in the appellant's house, the appellant who she referred to as Uncle J removed both his and her clothes despite her opposition and, caused his genitalia to come into contact with hers which caused her pain.



5. As discussed in the Kenya Judiciary Criminal Procedure Bench Book 2018 paragraphs 94-96 no corroboration is necessary for the evidence of a child taken on oath although cross-examination is available for sworn or unsworn evidence of a child in the usual way:
- “94. No corroboration is required if the evidence of the child is sworn (*Kibangeny arap Kolil v R* 1959 EA 92). Unsworn evidence of a victim who is a child of tender years must be corroborated by other material evidence implicating the accused person for a conviction to be secured (*Oloo v R* (2009) KLR).
95. However, in cases involving sexual offences, if the victim's evidence is the only evidence available, the court can convict on the basis of that evidence provided that the court is satisfied that the victim is truthful (s. 124, *Evidence Act*). The reasons for the court's satisfaction must be recorded in the proceedings (*Isaac Nyoro Kimita v R* Court of Appeal at Nairobi Criminal Appeal No 187 of 2009; *Julius Kiunga M'birithia v R* High Court at Meru Criminal Appeal No 111 of 2011).
96. The evidence of a child, sworn or unsworn, received under section 19 of the *Oaths and Statutory Declarations Act* is subject to cross-examination pursuant to the right to fair trial, which encompasses the right to adduce and challenge the evidence produced against the accused (art. 50(2)(k), *CoK*”
6. The complainant's testimony did not require corroboration in accordance with the proviso to section 124 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) if there are reasons to believe that the child was telling the truth. In this regard, the trial magistrate noted that the complainant was consistent and steadfast in her testimony, even when she was recalled to court.
7. Despite this, PW2, JTW corroborated the complainant's averments. He recounted that he was asleep at the time the ordeal ensued but when he came to he saw what the appellant who was his cousin was up to and went ahead to report the incident to the complainant's parents who were PW1, BH and PW3 PW. The parents rushed her to Nairobi Women's Hospital. PW5, John Njuguna a clinician produced her PRC form which indicated that she had no injuries on her body or private parts.
8. PW6, PC Nancy Gathuri recalled that when she was assigned this matter, she proceeded to interrogate the appellant. He mentioned that four children, including the complainant, play in his house. She went ahead to interrogate the complainant who explained all that had occurred in detail. She produced a Linda Mama Book in the complainant's name dated 15th November 2019.
9. In his defence, the appellant testified that on the material day, he was at the club with his cousin, and later when he came home he found seven children playing in his house. He alleged malice from the complainant's father who had accused him of stealing his chicken and windows. He further denied committing the offence. The family feud claim was corroborated by DW2 MWT and DW3 RWW
10. In analysing the evidence proffered, this Court takes into account the law, where Section 9(1) and (2) of the *Sexual Offences Act* of 2006 provides that;
- (1) A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.
- (2) A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.



11. The complainant averred that the appellant forcefully inserted his penis into her vagina, causing her pain. This was corroborated by the complainant's uncle PW2 who outrightly saw the appellant place the complainant's genitalia on his. The clinician maintained that her genitalia was spared of injuries. Thus, the evidence by the prosecution unequivocally points out that his actions were an attempt to defile the complainant.
12. The element of identification is well settled since the complainant, both of her parents PW1 and PW3, her uncle PW2, and the investigating officer PW6 identified him in court.
13. The age of the complainant is certain. Her birth records in the Linda Mama book produced by PW6, as well as the evidence by her father PW1 point out that the complainant was born on 15th November 2019. She was indeed 4 years old at the time of the ordeal and was therefore a child within the meaning of the law. The upshot of the analysis above is that the appellant's conviction was proper and is upheld.
14. With regard to the sentence, the appellants were sentenced to thirty (30) years imprisonment. During sentencing, the court considered the appellant's mitigation, the pre-sentence report, and the aggravating circumstances surrounding this case and exercised discretion. Based on this premise, I see no reason to interfere with the sentence.
15. 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 27TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

