



**Daudi v Republic (Criminal Appeal E015 of 2024)  
[2025] KEHC 9304 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9304 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E015 OF 2024  
DR KAVEDZA, J  
JUNE 30, 2025**

**BETWEEN**

**LILIAN KAMENE DAUDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 5th July 2024 by Hon. W. Lopokoiyit (SRM) at Kibera Chief Magistrates' Court Sexual Offense Case No. E076 of 2022 R v Lilian Kamene Daudi)*

**JUDGMENT**

1. The Appellant was charged and after a full trial convicted by the Subordinate Court of two counts of offences. Count I was sexual assault contrary to section 5[1][a][i] as read with section 5[2] of the [Sexual Offences Act](#) No. 3 of 2006, whereas Count II was compelling an indecent act contrary to section 6[b] of the [Sexual Offences Act](#) No. 3 of 2006. She was sentenced to serve ten [10] years imprisonment and five [5] years imprisonment respectively to run concurrently.
2. Being aggrieved, she filed an appeal challenging the totality of the prosecution's evidence against which he was convicted. She contended that the learned trial magistrate disregarded her cogent defense.
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 called five [5] witnesses in support of their case. PW1, JSA, a minor, gave unsworn testimony after voir dire, stating the appellant, employed for household chores, caressed and licked her private parts and coerced her to reciprocate, on two occasions while at home and during a swimming outing.



5. PW2, PW, the complainant's mother, corroborated this, testifying that PW1, during a nightmare, shouted "Aunty stop." Upon inquiry, PW1 disclosed the incidents and threats using a knife to ensure silence. PW2 reported the matter to the landlord, who advised her to involve the police and took PW1 to Gertrude's Hospital. PW2 noted PW1's prior herpes diagnosis.
6. PW3, Dr. Thomas Ngweri, was barred from producing medical documents compiled by PW4, Dr. Lina Gichohi. PW4 testified that PW1, treated for herpes on 17<sup>th</sup> August 2021, had lesions on her lips and mouth. In this case, PW1 exhibited yellowish-white discharge, vaginitis, and pus cells in urine indicating a urinary tract infection, and a history of acute diarrhea and oral fungal infections.
7. PW5, Chief Inspector Francis Mungi, extracted 13 photographs from a phone, presenting an exhibit memo, certificate, and the device in court. PW6, PC Mercy Mwikali, the investigating officer, stated the appellant surrendered at the police station, denying the allegations. PW6 produced PW1's birth certificate, confirming her birth on 8<sup>th</sup> December 2017, and photographs evidencing prior oral infections.
8. The court found a prima facie case established, placing the appellant on her defence. DW1, Damaris Mutende Kilonzo, confirmed knowing the appellant, who cared for PW1. DW2, the appellant, denied the allegations, stating she only cooked for the family and tested negative for illness in August 2022.
9. Section 5 of the *Sexual Offences Act* provides the offences under which the appellant was charged as follows:
  5. Sexual assault
    - [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.
    - [2] A person guilty of an offence under this section is liable upon conviction to imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life.
10. The prosecution's evidence demonstrates that the appellant habitually caressed the complainant's genitalia, as established by PW1's detailed and unwavering testimony, which withstood cross-examination. PW1, a minor, described the appellant's actions with clarity, outlining repeated instances of inappropriate contact. This account was corroborated by PW4, Dr. Lina Gichohi, whose medical examination revealed findings consistent with sexual assault, including evidence of genital trauma. These facts collectively satisfy the elements of Count I, sexual assault, under the applicable provisions of the law.
11. For the second count, compelling an indecent act, the evidence reveals that the appellant coerced PW1 to perform an inappropriate act by licking her genitalia. The appellant further intimidated PW1 with threats of knife violence to prevent disclosure, causing profound distress. PW2, the complainant's



mother, testified that PW1's trauma manifested in nightmares, where she cried out "aunty stop," corroborating the psychological impact of the ordeal. This evidence substantiates the charge of compelling an indecent act.

12. Regarding the complainant's age, PW6, the investigating officer, produced PW1's birth certificate, confirming her birth on 8 December 2017. At the time of the offence, PW1 was four years old, unequivocally a child within the legal definition, fulfilling this element of the charges.
13. The prosecution's case, supported by consistent witness testimony and medical evidence, establishes the appellant's culpability beyond reasonable doubt. The upshot of the above analysis is that the conviction by the trial court is affirmed on both counts.
14. The appellant was sentenced to serve ten [10] years imprisonment in Count I and five [5] years imprisonment for Count II. During sentencing, the court considered the appellant's mitigation, the time spent in custody, and the fact that the appellant was a first-time offender. 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 30<sup>TH</sup> DAY OF JUNE 2025**

---

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

