



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT SIAYA

HCCRA NO. 39 OF 2015

(CORAM: J.A. MAKAU – J.)

STEPHEN ODUOR ODAWA.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Being an Appeal against both the conviction and the sentence

dated 18.9.2014 in Criminal Case No. 34 of 2014 in Ukwala

Law Court before Hon. C. N. Wanyama - R.M.)

J U D G M E N T

1. The accused **STEPHEN ODUOR ODAWA** was charged with an offence of defilement contrary to **Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006**. The particulars of the charge are that on the 25th day of January 2014 at [particulars withheld], in Ugunja Sub-County within Siaya County defiled 4 year old child **AAO**. The appellant faced an alternative charge of committing an indecent act with a child contrary to **Section 11(1) of the Sexual Offences Act. No. 3 of 2006**. The particulars of the alternative charge are that on the same day, same place, the Appellant intentionally touched the vagina of AAO, a child aged 4 years.
2. After full trial, the Appellant was convicted and sentenced to life imprisonment.
3. The Appellant preferred this appeal being HCCRA No. 20 of 2015 at Kisumu on undisclosed date and which appeal was transferred to Siaya High Court for hearing and determination through a letter dated 1st September 2015. This court wrote letters calling for the Lower court file without any success.
4. On 23rd January 2017, both the appellant and the state counsel made submissions on the appellant's appeal and the court set 23rd March 2017 as a date for the judgment.
5. That before this court delivered its judgment, it received a letter dated 15th February 2017 from Deputy Registrar Kisumu on HCCRA No 20 of 2015 stating as follows: -

“The above matter refers:

We are in receipt of your letter reference JUD/SYA/HCCRA NO 39/2015.

However we would wish to inform you that the accused had earlier on filed KISUMU/HCCRA NO.121 OF 2015 which appeal was dismissed as unmeritorious by Hon. Justice H.K. Chemitei on 28th September 2015 copy enclosed.

The accused later filed the instant appeal. We suspect that the Lower Court file was returned to Ukwala after the appeal was concluded. (HCCRA 121/2014)”

6. I have from the said letter noted that apart from HCCRA No. 20 of 2015 at Kisumu, which has been forwarded to this court being the current appeal forming the basis of this Appeal, the appellant had filed HCCRA No. 121 of 2014 at Kisumu High Court which was heard and determined as per attached judgment in the Deputy Registrar's letter of 15th February 2017. This appeal was therefore determined and accordingly dismissed. The appellant, it seems acted unlawfully in filing a second appeal thus HCCRA No. 20 of 2015 at Kisumu, arising out of the same Lower Court judgment which had already been determined. It was forwarded to this court for hearing and determination. The appellant had no right of appeal in respect of HCCRA No. 20 of 2015. He should have filed an appeal to the Court of Appeal, Kisumu once his HCCRA No. 121 of 2014 had been dismissed on 28th September 2015.

7. Upon perusal of the judgment in HCCRA No. 121 of 2014, Stephen Oduor Odawa V Republic, arising out of RMCRC 34 of 2014, by Hon. C.N. Wanyama, I am satisfied that this appeal was determined by a competent court of equal status to this court. The appellant should have filed his further appeal to the Court of Appeal and not at the same High Court. The appeal is *Res Judicata* by virtue of HCCRA No. 121 of 2014. I find the appeal is incompetent and the same is struck out.

DATED AND SIGNED AT SIAYA THIS 23RD DAY OF MARCH 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Appellant: Present

M/S Odumba: for State

Court Assistants:

1. George Ngayo

2. Patience B. Ochieng

3. Sarah Ooro

J.A. MAKAU

JUDGE