

REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL NO. 63 OF 2016

BETWEEN

FREDRICK ONYANGO ALOO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence dated of Hon. C. N. Wanyama, RM dated 17th June 2016 in Ukwala Senior Resident Magistrates' Court Criminal Case No. 260 of 2015)

JUDGMENT

1. The appellant, **FREDRICK ONYANGO ALOO**, was charged with defilement contrary to **section 8(1) and (3)** of the ***Sexual Offences Act***. The charge was that on an unknown day in January 2015 within [particulars withheld] Siaya County, he intentionally caused his penis to penetrate the vagina of MAO, a child aged 15 years.

2. The child testified twice in the matter, she initially told the Court that it was the appellant who sexually assaulted her. The second time she testified, she stated that she had been told to say that it was the appellant by her school Chairman. She also told the Court that she had sexual intercourse with another person, EW. The prosecution case was that she was pregnant as a result. The prosecution did not disprove the possibility that it could not have been any other person other than the appellant who defiled her.

3. In the circumstances, I agree with the counsel for the respondent that the conviction is unsafe. The appeal is allowed and conviction and sentence quashed. The appellant is set free unless otherwise lawfully held.

DATED AND SIGNED AT SIAYA THIS 22ND DAY OF DECEMBER 2017.

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Odumba, Prosecution Counsel, instructed by the Director of Public Prosecutions for the State.

Court Assistants: L. Odhiambo and L. Atika