

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL APPEAL NO. 160 OF 2009

BETWEEN

FREDRICK OWINO OKOTH APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence of Hon.E. K. Mwaita, RM dated 29th October 2009 at Senior Resident Magistrate's Court at Ukwala in Criminal Case No. 62 of 2010)

JUDGMENT

1. The appellant herein **Fredrick Owino Okoth** was charged with the offence of gang rape contrary to **section 10** of the *Sexual Offences Act*. The particulars were that on the 8th and 9th February 2009 at [particulars withheld] Ugenya District, the appellant, in association with others, had carnal knowledge of H A M without her consent. The appellant and his co-accused were convicted of the alternative count of unlawfully and indecently assaulting H A M, a girl aged 13 years by touching her private parts namely her vagina. They were sentenced to 20 years imprisonment and appealed against conviction and sentence.

2. His co-accused, **SAMSON ODHIAMBO ARANGO** appealed against the conviction and sentence vide **KISUMU HCCRA NO. 35 of 2010**. His appeal was heard by **Chemitei J.**, and was allowed only to the extent that the sentence was reduced to 10 years' imprisonment. The court did not deal with the appellant's case although the matters had been consolidated.

3. The appellant does not contest the conviction but states that since the sentence was excessive, it should be reduced accordingly. The respondent does not object to such a course being taken in view of the previous decision.

4. Chemitei J., held that the appellant, who had been convicted of the alternative charge, ought to benefit from the minimum sentence of 10 years' imprisonment. I have no reason to depart from this as the appellant was a co-accused in that case.

5. I therefore affirm the conviction and allow the appeal to the extent that the sentence is reduced to ten (10) years imprisonment from the date of the lower court judgment.

DATED and DELIVERED at KISUMU this 23rd day of November 2016.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Osoro, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.