



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CRIMINAL APPEAL NO.35 OF 2010**

**SAMSON ODHIAMBO ARANGO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**[Appeal From Original Conviction and Sentence From Ukwala SRM'S Court : E. K. Mwaita – R.M  
in Criminal Case No.62 of 2009. ]**

**\*\*\*\*\***

**J U D G M E N T**

1. The appellant and his co-accused were charged with the offence of Gang Rape contrary to Section 10 of the Sexual Offences Act No.3/2006. The particulars were that on the 8th and 9th February 2009 at [particulars withheld] sub-location in Ugenya District within Nynaza Province in association had carnal known of H.A.M. without her consent.
2. They were also charged with the alternative charge of Indecent Act with a child contrary to Section 11(1) of the Sexual Offences Act No.3/2006.
3. The particulars were that on the night of 8th and 9th January 2009 at [particulars withheld] Sub-location in Siaya District within Nyanza Province in association unlawfully and indecently assaulted H. A. M. a girl of the age of 15 years by touching her private parts namely 'vagina.'
4. The appellant was convicted on the alternative count and sentenced to 20 years imprisonment hence this appeal. The appellant however at the hearing abandoned his original appeal and dwelt on the amended petition which clearly dwelt on mitigation.
5. The brief facts of the case are that PW1 had visited her friend whom they fellowship together in church and are in the choir. On her way she met the appellant and his colleague. They forcefully pulled her beside the road and proceeded to defile her in turns. She went to her friend's house one L.
6. She thereafter the following day reported to her parents who proceeded to report to the police. The appellant and his friend were arrested by PW2 one PC Prestone Gitonga who produced the complainant's underpants. PW4 Duncan Ochieng the Clinical Officer produced the P3 form which showed that the hymen was broken.
7. In his defence the appellant denied the charge arguing that the complainant infact had a boyfriend one O who slept with her that night. He said that they actually met the complainant stranded on the way

and he was heading to a funeral.

8. As earlier stated the appellant decided to abandon the original appeal which had several grounds. The amended petition however prays that this court considers reducing the 20 years period meted against the appellant by reducing the same. He prays that he had undergone various studies and training while in prison and that he was now a reformed person.

9. The state on the other hand opposed the appeal arguing that although the appellant may have reformed whatever they did to the victim cannot be erased and that such cases were indeed rampant in the area.

10. I have read the proceedings together with the appellant's amended petition. I have also heard the submissions by the state counsel. I note that the appellant and his accomplice were convicted of the alternative charge, namely incident act with a child. The same carries a minimum sentence of 10 year.

11. Taking into consideration the appellant's submissions I find that he is a young person who deserves a second chance. I concur with the learned state counsel that the offence against the victim may have some lasting impact on her. However I do not want to wish away the appellant's reformation while in prison for the last 6½ years.

12. Taking the totality of the facts herein I shall reduce the sentence against the appellant from 20 years imposed by the trial court to 10 years imprisonment from the date of the lower court's judgment.

13. Orders accordingly.

**Dated, signed and delivered this 27th July 2015**

**H. K. CHEMITEI**

**J U D G E**