REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HIGH COURT CRIMINAL APPEAL NO. 30 OF 2015

(CORAM: J. A. MAKAU – J.)

DAVID OCHIENG AKETCH…..... APPELLANT

VERSUS

REPUBLIC …..... RESPONDENT

(Being an appeal against both the conviction and the sentence in Criminal Case No. 613 of 2014 in Siaya Law Court before Hon. Hazel Wandere – P.M.)

JUDGMENT

1. DAVID OCHIENG AKETCH was charged with offence of **attempted defilement contrary to Section 9(1) (2) of the Sexual Offences Act No. 3 of 2006**. The particulars of the offence are that on 5th day of August 2014, at Nyangoma Trading Centre in Siaya District within Siaya County, intentionally attempted to cause his penis to penetrate the vagina of **A A O** a child aged 12 years. The appellant faced alternative charge of Committing an **indecent Act with a Child Contrary to Section II (1) of The Sexual Offences Act No. 3 of 2006**. The particulars of the alternative charge are that on the same day and at the same place the appellant intentionally touched the buttocks of **A A** a child aged 12 years with his penis.

2. The complainant A A O testified that on 5th August 2014 she was on her way to school in the morning using the road which usually pass through a trading centre and as she was passing through the shops, she was called by the appellant who is a barber at that centre by her name of A. PW1 went as she thought he wanted to send her as she used to be shaved her hair by him. The appellant then pulled PW1 into the shop which is a small room. The appellant was by then alone and in the room there was a chair and shaving machine. The appellant then held PW1 by her hand and she cried leading the appellant covering PW1's mouth with his hands. The (Court noted that PW1 was crying as the trial was going on and noted so). That PW1 was standing as the appellant was putting his finger in her vagina and also putting his penis there so forcefully that PW1 felt a lot of pain as the appellant was very forceful. That the appellant covered PW1's mouth as he did that for along time. PW1 struggled to no avail. The appellant pulled up PW1's dress and unzipped his trouser holding PW1's hand. That after the incident the appellant gave PW1 Ksh.20/= of one single coin and threatened to kill her if she would tell her mother what he had done. PW1 then returned home as she had a lot of pain in her stomach. PW1 informed her father (PW3) what appellant had done as she was not happy. PW1 was then taken to Nyango'ma Police Station by her father. She reported the matter and appellant was arrested by Police. PW1 was then taken to hospital and she told

the doctor what appellant had done to her. PW1 testified that she knew the appellant before as they used to call him “Mbunge” pointing at the accused at the dock. During cross-examination PW1 testified she was going to school alone. She stated the appellant held her tightly with one hand, pulled her clothes off and pushed his fingers inside her vagina, then his penis pressing between her thighs so hard. PW1 stated she cried but appellant closed her mouth. PW1 stated people in hotel could not hear her crying because the appellant had closed her mouth. That people were walking along the road but PW1 stated she was alone. PW1 stated she was unable to scream for help as she was in a shock and also in a lot of pain (the trial Court noted PW1 wailed in Court).

3. PW2 M A O testified that she is stepmother to PW1 A A aged 12 years. That on 5th August, 2014 PW1 left for school at around 7.00 a.m. but at 8.00 a.m. she returned home crying where she found PW2 and PW1'S father (PW3) PW1 told PW2 and PW2 that on her way to school one “Bunge” who lives at Nyango'oma Trading Centre and has a “Kinyozi” at the Centre called her and he entered the house, locked the door, threatened to kill her if she cried. PW1 was told not to even scream, that then the appellant defiled her. That PW2 and PW3 took PW1 to Nyango'ma Health Centre. She identified “Bunge” in the dock. During cross-examination PW2 testified she was not an eye witness.

4. PW3 P O O father to PW1 testified that PW1 is aged 12 years old as she was born in 2001 and that he acquired birth certificate for her later as her mother was dead. That on 5th August, 2013, PW1 left for school at 7 a.m. but he saw her at 8.00 a.m. coming back home. She told him while on her way to school “Bunge” who PW3 knew and who he identified as the person in the dock and who owns a “Kinyozi” shop called PW1 alleging he needed to send her Mandazi. That he told PW1 to enter his house and locked the door, removed her clothes threatening to kill her if she screamed. He then covered her mouth and removed his clothes then inserted her vagina with his penis. PW3 was shocked and decided to take PW1 to Nyango'ma Heath Centre, then Siaya District Hospital after reporting to Kogelo Police Station. Pw3 stated the appellant took his penis and inserted it inside PW1's vagina. He testified that Police issued P3 form MFI P1. PW3 testified he had doctors report, a Post Rape Care Report MFI P2, Birth Certificate MFI P3. During cross-examination PW3 testified that PW1 was the only person who informed them what appellant had done. PW3 testified at the trading centre there are other people with “Kinyozi” and that they call the appellant “Bunge”. He confirmed that PW1 was extensively examined by doctor but he is not an eye witness.

5. PW4 Sila Omondi Aluoch a clinical officer attached to Siaya Referral Hospital testified that he had medical report which he had completed for A A O aged 12 years. He stated that on 6th August, 2014 PW1 was issued with out patient card No. 10000285. She was alleging to have been defiled on 5.8.2014 by a known person. That PW4 testified upon examination on her genitalia he found it normal, no bruises or lacerations, no bleeding or discharge. That laboratory tests were all negative. PW4 filed PW3 form on 6.8.2014 based on physical examination. PW4 testified he did not find any conclusive evidence of defilement. He also completed Post Rape Care Report. He identified MFI P1. MFI P2 and laboratory test, report as MFI P4 and produced them as exhibits 1, 2 and 4 respectively. On cross-examination he testified that he examined the appellant who had been escorted by Police to the hospital. That upon examination he did not notice any abnormality, no infections. He was noted to be H.I.V. Positive. He signed the P.3. form on 6.8.2014 which he produced as exhibit 5 and laboratory result as exhibit 6. On cross-examination PW4 testified he examined PW1 and found no abnormality and that all laboratory test were negative.

6. PW5 No. 78907 P.C. Stephen Mugambi attached to Kogello Police Station, was the investigating Officer in this case. He testified that on 5.8.2014, PW1 with PW3 her father reported that a barber had held PW1 and attempted to defile her. That PW5 organized for arrest of the appellant and he arrested him and took him with PW1 to Siaya Referral Hospital. He issued P3 forms which were filed by the doctor and returned. PW5 identified exhibit 1 and 5. He stated that he received the child Health Card, which indicated PW1 was a minor. He also identified PW1's birth certificate MFI P3 card and the appellant in the dock as the person he had arrested. During cross-examination PW5 testified that PW1 identified the appellant as “Bunge” and a person well known to her.

7. The appellant when put on his defence he stated:-

"I leave it all to the Court. Nothing to say in the defence."

8. The trial Magistrate evaluated the prosecution evidence and convicted the appellant for the offence of attempted defilement and sentenced him to ten (10) years imprisonment. In convicting the appellant, the trial Court expressed itself as follows:-

> ***"This is a case where the Court only has the evidence of a child which is uncorroborated. I therefore invoke the provisions of Section 124 Evidence Act Cap 80 Laws of Kenya and have cautioned myself. The evidence by the prosecution was truthful. The complainant victim was traumatized. She was unable to proceed to school. She went home crying and even in Court continued to cry as she narrated what the accused, who used to give her a hair cut had done to her. She had no reason to lie. Her evidence was truthful and remained unshaken even upon vigorous cross examination. I find the accused person guilty of the charge in the main count. I convict him accordingly."***

9. Aggrieved by the decision of the trial Court, the appellant was provoked to prefer the appeal through his advocate Mr. Wakla, learned Counsel raising the following grounds of appeal:-

> ***a) The Learned Magistrate erred in law and fact in convicting the Appellant when the evidence on record was manifestly insufficient, inconsistent and had glaring gaps hence incapable of sustaining a conviction.***
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> ***b) The Learned Magistrate erred in law and fact in convicting the Appellant against the weight of evidence on record.***
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> ***c) The Learned Magistrate erred in law in failing to give due and/or adequate consideration to the Appellant's defence.***
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> ***d) The Learned Magistrate erred in law and fact by passing a sentence which was manifestly harsh and excessive in the circumstances, in any event.***

10. At the hearing of the appeal, learned Counsel Mr. Wakla appeared for the appellant while M/s. Odumba learned state Counsel represented the State.

11. The counsel for the appellant before proceeding with appeal abandoned ground number 4 on sentence as the Court gave him mandatory minimum sentence and argued grounds numbers 1 to 3 together. He emphasized the key issue in the appeal relates to sufficiency, adequacy and quality of the evidence. He urged under ground No. 1 and 2 of the appeal that the prosecution's evidence was manifestly insufficient and inconsistent and could not sustain a conviction. He urged the evidence of PW1 was weak and for conviction to be sustained there was need of other evidence which was lacking. That even anything PW1's evidence painted a picture of defilement but then there was no other evidence. The medical report, thus P.3. form and laboratory report submitted did not corroborate the complainant's evidence. He submitted on the grounds that PW1's evidence was not available and did not support charge. The learned Counsel submitted that had trial Court considered what PW1 had stated and the evidence of PW2 and PW3 she would not have invoked section 124 of the evidence Act and found and held PW1 was truthful witness in her testimony and would have evaluated the evidence of PW1, PW2 and PW3. She failed to do so and she fall into an error. The appellant's counsel referred to the case of **Michael Mugo Musyoka V. Republic Criminal Appeal No. 89 of 2013** *(I will refer to the case later in this judgment)*. On the appellant's option to keep quiet he submitted the appellant was within his constitutional right that to say anything and that notwithstanding the prosecution was more duty bound to prove their case beyond any reasonable doubts. He submitted the prosecution failed to discharge the burden of proof to the required standard, urging the conviction was an error.

12. The State Counsel in opposing the appeal submitted the complainant PW1 was firm in her evidence and was never shaken in cross-examination. She further submitted PW2 and PW3 in their evidence stated what Pw1 had told them. The State Counsel submitted the medical Report did not support attempted

defilement however evidence of PW1 was sufficient to support attempted defilement. The learned State Counsel in support of her proposition referred this Court to the case of **Omar Mohammed Ibrahim V. Republic HCCA 136 of 2013 (Garissa)** adding appellant's acts amounted to attempted defilement and Court was able to determine the demeanor of the complainant and other witnesses and Court found the evidence of the prosecution witnesses especially PW1 who cried and wailed in Court credible she further submitted the trial Court properly invoked **Section 124 of the Evidence Act.** The State Counsel submitted that the appellant's defence was properly considered and referred Court on that point to the case of **Erick Onyango Ondeng' V. Republic C.A. No. 5 of 2013 (C.A.) at Nairobi**. She urged Court to dismiss the appeal as both the conviction and sentence were safe and proper.

13. The learned counsel for the appellant in a quick rejoinder submitted the drawing of inference from the PW1's cries in Court had nothing to do with her telling the truth especially bearing in mind she was a child and children cry for various reasons and Court was in a way being swayed by PW1's cries instead of putting down the reasons for her cries. On the authorities submitted by the State Counsel Mr. Wakla learned Advocate submitted that the authorities are distinguishable. He submitted in the case of **Omar Mohammed Ibrahim V. R. HCCRA 156 of 2013 (supra)** is persuasive authority being a judgment of Court of concurrent jurisdiction and in that case there was overwhelming evidence of attempted defilement as the complainant's evidence was corroborated by PW2 as opposed to the instant case where Pw1's evidence is not corroborated and that **Section 124 of the Evidence Act** was not properly applied. On the case of **Erick Onyango Ondeng' V. Republic Cr. A. 5 of 2013 (Supra)** he submitted the same is of no value to the State in this case as it dealt with consideration of defence for the appellant during trial and on appeal.

14. This is first appeal from conviction I am therefore the first appellate Court and I am guided by principles enunciated in the case of **Okeno V. Republic (1972) E.A. 32** when the Court of Appeal set out the duty of the first appellate Court in the following terms:-

"An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to afresh and exhaustive examination (Pandya Vs. Republic (1957) EA. (3365) and the appellate Court's own decision on the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala Vrs. R. (1957) E.A. 570). It is not the function of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower Court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial Court has had the advantage of hearing and seeing the witnesses, see Peters Vrs. Sunday Post [1958] E.A. 424."

15. In the instant case the testimony of PW1 the complainant is that she was walking to school alone in the morning of the alleged offence at Nyangoma Centre at 7.00 a.m. when the appellant called PW1. That PW1 went because she thought he wanted to send her. The trial Court did not make an finding on this but I do not doubt that happened. That Pw1 and the appellant were alone when the appellant according to PW1 pulled her into the shop. Pw1 testified the appellant held her hand and as she cried he covered her mouth. He was at the same time putting his fingers and his penis in her vagina. He did that for a long time as PW1 struggled to no avail. He pulled up her dress and unzipped his trouser as he held her as people were walking along the road. I do not doubt that the incident took place at 7.00 a.m. in a busy trading centre as people were in a nearby hotel and others were walking along the road. The inference to be drawn from the prosecution witnesses evidence is that the trading centre is busy and by 7.00 a.m. people were busy with their daily chores and others were walking along the road. The complainant in her evidence did not mention the appellant being at the shop at the time of the incident. That is of great significance to note according to PW1 the incident took place at a market centre at a busy hour and in presence of members of public as Pw1 cried and struggled to free herself and without such action failing to attract curiosity or attention of any other person or people who were passing by. In view of the Pw1's evidence it is my considered view that if the alleged offence took place as described by Pw1 in a such busy market centre with people walking along the road and inside a shop, with Pw1 crying struggling and pushing and appellant forcing himself on her such commotion would not have failed to deter the appellant

and/or attract curious by passersby and other people, to proceed to the scene of the incident and find out what the appellant, a full grown-up man was doing to a minor.

16. A crucial issue for my consideration is whether the prosecutions witnesses PW1, PW2 and PW3 were credible witnesses. PW1 testified after the incident the appellant gave her Kshs 20/= of a single coin and told her he will kill her if she told her mother what had happened. She went home and told PW2 and PW3. PW2 testified PW1 told her the appellant called her and gave her Kshs.20/= and told her to go into his house as he wanted to send her. That he then entered the house and locked the door. That she did not cry or scream as she was threatened with death. That the appellant defiled her. PW3 on his part stated PW1 told him she was called by the appellant stating he wanted to send her for mandazi telling her to enter his house, then locked the door, removed her clothes threatening to kill her if she screamed. He covered her mouth and removed his clothes then inserted her vagina with his penis. On evaluation of evidence of PW1, PW2 and PW3 it is evidently clear that their evidence is contradictory and riddled with inconsistencies. PW1 in her evidence stated that the appellant called her and pulled her into the shop while she told PW2 the appellant called her gave Kshs.20 and told her to go into his house as he needed to send her. In her evidence she claimed to have been forced to the shop by the appellant and given Kshs.20/= after the incident. PW2's evidence is contradictory to her own evidence. PW1 talked of a shop yet she told PW2 she went to the appellant's house. She did not in her evidence mention the shop being locked when she testified. PW2 stated that when the appellant entered the house he locked the door. In her evidence she stated she cried but appellant blocked her mouth with his hand. PW2 did not mention her telling her she cried. PW3 contradicted the statement of PW1 and PW2. He stated PW1 told him she was called by appellant who told her he needed to send her mandazi. PW1 and PW2 did not mention appellant needing to send PW1 for mandazi. PW3 did not mention anywhere PW1 being given Kshs. 20/= before or after by the appellant. Similarly PW1 did not mention appellant having removed her clothes in her evidence or to PW2. She did not mention appellant having removed his clothes but stated that the appellant unzipped his trouser and held her hand. Contrary to PW3 assertion that appellant removed his clothes and inserted his penis into PW1's vagina, PW3 did not mention PW1 having told her she cried. PW1 never mentioned to PW2 and PW3 of the appellant having put his finger in her vagina.

17. Having evaluated and analyzed the evidence of PW1, PW2 and PW3, I find the evidence to have glaring inconsistencies and contradictions, I have very carefully perused the trial Court's judgment and note that the trial Magistrate did not adequately consider or evaluated and analyzed the prosecution's case and had the Court done that it would have noted the inconsistencies and contradictions. It is my view and finding that the prosecution's evidence which is riddled with glaring inconsistencies and contradictions goes to the root of the charge should not be relied upon. I therefore find the trial Court in finding and noting that the evidence by the prosecution was truthful did find so with no basis for such findings.

18. In the instant case the offence was committed in absence of witnesses. The trial Court correctly found that the only evidence available was of PW1, a child which was uncorroborated and invoked the provisions of **Section 124 of the evidence Act Cap 80 Laws of Kenya.** The said Section provides:-

> ***"(Sec. 124.) Notwithstanding the provisions of section 19 of the Oaths and Statutory Declarations Act, where the evidence of alleged victim admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.***
>
> ***Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."***

19. In this case the evidence of PW1 was not supported by crucial medical evidence that was produced by PW4 in this case. What was the evidence of PW1 as regards her injury. She partly stated:-

> ***"------- Then he held my hand and I cried. He covered my mouth with his hands it was stated. He***

was putting his finger in my vagina. He was pulling his penis there too forcefully. I felt a lost of pain. He felt was very forceful." He covered my mouth. He did it for long. I struggled to no avail ---"

20. The medical document exhibit 1, 2 and 4 produced by PW4 revealed that upon PW1's examination her genital was normal, had no bruises nor lacerations. That there was no bleeding or discharge. PW4 stated he did not find any conclusive evidence of defilement. I note the evidence of PW4 evidence contradicts PW1's narrative evidence. That examination of both PW1 and the appellant by PW4 turned negative results.

21. The appellant was charged and convicted with an attempted defilement contrary to **Section 9 (1) of the Sexual Offences Act No. 3 of 2006.** What is attempted defilement? It can safely be stated to be the unsuccessful defilement. For a successful prosecution of an offence of attempted defilement the prosecution must adduce sufficient evidence to the required standard to prove an attempted penetration. This may in my view include bruises or lacerations from complainant's vagina and/or bruises or lacerations of culprits genital organ and finding male discharge such as semen or spermatozoa outside the complainant's vagina or innerwear without there being penetration. There was absence of penetration or evidence linking the culprit with the offence of attempted defilement.

22. In the instant case I have carefully gone through the evidence and exhibits produced by the prosecution. The evidence of PW1 do not support the offence of attempted defilement. According to PW1 she walked home normally. She had no difficulties in going back home. She did not have bruises on her private parts and no discharge was noted on her innerwear. Her clothes were not torn. Her pant did not have any spermatozoa. The appellant was not caught in the act and as there is no supportive medical evidence PW1's evidence stands without support. I had noted that there were inconsistencies and contradictions on evidence of PW1, PW2 and PW3 and the said evidence cannot corroborate evidence of PW1. The evidence is that the appellant attempted to defile PW1 and that PW1's evidence is that he used a lot of force where on the other hand she stated he put his penis in her vagina it is unbelievable that no single laceration or bruise or bleeding was caused on her private parts or any other part of her body. PW2 and PW3 where the first people PW1 reported to and they did not in their evidence state PW1 had any physical injuries or any difficulties in her movements. The trial Magistrate in her judgment noted though PW1 had no bruises on her genitalia, she had tenderness as per exhibit P1, the P.3. form. That finding influenced the trial Magistrate's judgment. The findings as can be noted from the Court proceedings specially from evidence of PW4 and other witnesses had no connections or link to the alleged attempted defilement. PW4 an expert and who examined the complainant and filed P.3. form in his evidence he did not mention there being tenderness to PW1's genitalia nor its course or linked the same to the attempted defilement and in absence of such evidence, I find there was misapprehension of evidence on the part of the trial Court.

23. In **Criminal Appeal No. 89 of 2013 in the case of Michael Mugo Musyoka V. Republic [2015] eKLR** the Court stated as follows:-

"we note that PW2 testified that she examined the minor and noticed that her private parts were wet. It is our view that a wet private part is not proof of an indecent act."

24. In view of the evidence in this case and evidence of PW4 and PW1 who did not mention of tenderness to her private parts immediately after the alleged attempted defilement, I am of the view that mere presence of tenderness in PW1's genitalia was not proof that there was an attempt to defile her by the appellant. There is no evidence on record that the tenderness to PW1's genitalia could not be caused by any other factors. Indeed tenderness on any part of the body can be caused by any other factor and in my view it would be unsafe, unsatisfactory and wrong to conclude that PW1's tenderness to her genitalia was as a result of the purported attempted defilement.

25. **Section 124 of the Evidence** which the learned trial Magistrate relied upon to convict the appellant in absence of other evidence to corroborate the evidence of PW1, the minor victim provides:-

(Sec. 124.) Notwithstanding the provisions of section 19 of the Oaths and Statutory Declarations Act, where the evidence of alleged victim admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.

Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."

26. **Section 124 of the Evidence Act** excempts corroboration of evidence of a minor victim in Sexual offences if the only evidence is that of the victim for reasons to be recorded in the proceedings, if the Court is satisfied that the alleged victim is telling the truth. To comply with **Section 124 of the evidence Act** the trial Court is supposed to be satisfied that the only evidence is that of the alleged victim, the Court is further required to record the reasons in the proceedings and be satisfied the alleged victim is telling the truth. I have perused the Court proceedings and it cannot be correctly stated that the only evidence is that of alleged victim of the offence of attempted defilement in this case. There was other evidence which the trial Court ignored and isolated. PW1's evidence ought not to have been considered in isolation of evidence of PW4 who had tendered medical evidence on the alleged victim and the appellant. The trial Magistrate did not in the proceedings nor in her judgment record the reasons and satisfaction why the alleged victim was telling the truth. In her judgment the trial Magistrate stated and I quote:-

"the evidence

by prosecution was truthful. The complainant, victim was traumatized. She was unable to proceed to school. She went home crying and even in Court continued to cry as she narrated what the accused who used to give her a hair cut had done to her. She had no reason to lie."

The learned trial Court did not fully comply with **Section 124 of Evidence Act** for reasons I have stated herein above and was in applying **Section 124 of Evidence Act** ignoring other evidence on record from other witnesses which ought to have been evaluated and analyzed in her judgment.

27. The Appellant on being put on his defence he opted to keep quiet. The right to keep quiet is a constitution right enshrined in **Article 50 (2) (1) of the Constitution of Kenya 2010.** It is one of the components of a fair trial neither should failure to testify be taken as an admission of guilty on an accused part. The trial Court is under a duty in such situation to evaluate the prosecution's evidence and ensure that the prosecution has proved its case beyond any reasonable doubts. The burden of proof do not shift to the accused by his opting to keeping quiet. The appellant's Counsel urged that the trial Magistrate did not appreciate the appellant's silence and observed that the appellant opted to keep silent. That though the Court did not evaluate the prosecution's evidence but reiterated what the evidence was all about, the fact that the accused opted to remain silent it is not correct for the appellant to imply that his right as enshrined under **Article 50 (2) (I) of the constitution of Kenya 2010** was infringed and that the burden of proof shifted to the appellant. The learned trial Court had not in her judgment showed displeasure or lack of appreciation of the appellant's exercise of his constitutional right to keep quiet. The appellant's submission that the trial Court did not appreciate his exercise of option as provided by the constitution under **Article 50 (2) (I)** of the constitution which ensures an accused person has a fair trial is misplaced and without any support.

28. The upshot is that the appellant's appeal succeeds. The conviction was unsafe and unsatisfactory. I accordingly find merit in the appeal, quash the conviction and set aside the sentence. The appellant should be set at liberty unless he is otherwise lawfully held.

DATED AT SIAYA THIS 17TH DAY OF DECEMBER, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 17TH DAY OF DECEMBER, 2015.

In the presence of**:**

Mr. Wakla for the Appellant.

M/s. M. Odumba for Respondent.

Appellant – Present

Court Clerk – Kevin Odhiambo

Court Clerk – Mohammed Akideh

J. A. MAKAU

JUDGE