



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.17 OF 2013**

**FRANCIS ODUORI MAKANA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(An Appeal arising out of the sentence of I.T. MAISIBA PM delivered on 8<sup>th</sup> February 2012 in Busia Criminal case no.17 of 2013)**

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

1. On his plea of guilty, the Appellant was convicted of the offence of Rape contrary to Section 3 (a) (b) 3 of The Sexual Offences Act No.3 of 2006 and sentenced to 10 years imprisonment. His Appeal is against sentence only.
2. The particulars of The Offence were that on the 26<sup>th</sup> September 2012 at [particulars withheld] within Busia County he intentionally caused his penis to penetrate the vagina of S N without her consent within the view of the said S N, a person with mental disabilities.
3. An Appellate Court can only set aside a sentence in Appeal if it is demonstrated that the sentence is unlawful, manifestly lenient or manifestly harsh, was imposed on consideration of some extraneous factor or on exclusion of some material factor or in breach of the principles of sentencing.
4. Under Section 3 (3) of The Sexual Offences Act No.3 of 2006, the minimum sentence for the offence of Rape contrary to Section 3(1) is imprisonment for 10 years. This Court is not told and does not see any principle of sentencing that The Trial Court breached. That Court imposed the minimum sentence permitted in law. Its hands were tied and so are mine. I would, as I now do, dismiss the entire Appeal.
- 5.

**F. TUIYOTT**

**J U D G E**

**DATED, DELIVERED AND SIGNED AT BUSIA THIS 21ST DAY OF OCTOBER 2014.**

**IN THE PRESENC EOF:**

**KADENYI .....COURT CLERK**

**APPELLANT PRESENT IN PERSON**

**OWITI.....FOR STATE**