



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 237 OF 2011**

**AKIBA CHEMBE MWARAVINO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From the Original Conviction and Sentence in the Criminal Case No. 51 of 2011 of the Senior Resident Magistrate's Court at Mariakani Hon. Machage - SRM)**

**JUDGMENT**

The Appellant **AKIBA CHEMBE MWARAVINO** was Convicted and Sentenced to ten (10) years imprisonment for a charge of indecent act with a child contrary to section 11(1) of the Sexual offences Act No. 3 of 2004.

The appeal is conceded on the grounds that the charge reads that the indecent act of touching the complainants private parts was on the 4th November, 2010.

Secondly, that the sexual offences Act came into commencement in the year 2006 **but not** year 2004 as indicated in the charge itself.

A perusal of the record does indicate that the complainant never mentioned the date of 4th November, 2010 as when she was indecently assaulted. She does indicate the month of November as the period in which the Accused/Appellant started seducing her.

A week later she had sexual intercourse with the Appellant at the office. She further told the court that she had sexual intercourse with the Appellant five times.

The charge sheet should have read,

**“On diverse dates as the exact dates seem to have escaped the complaints memory.”**

I have also noted as conceded by learned state counsel that the Appellant had been charged under the wrong law.

The sexual offences Act came into commencement in the year 2006 not 2004 as indicated in the charge sheet. I find the charge to be fatally defective.

The Conviction is quashed and Sentence set aside. He is set at liberty unless otherwise lawfully held.

Judgment dated and delivered in open Court this **3rd** day of **September, 2013**.

.....

**M. MUYA**

**JUDGE**

**3RD SEPTEMBER, 2013**

**In the presence of:-**

Learned state Counsel Miss Ogweno

The Appellant

Court clerk Musundi