



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Criminal Case 257 of 2010**

**E B W ..... APPELLANT**  
**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was charged with the offence of attempted defilement to a girl under the age of 12 years contrary to Section 9 (1) of the Sexual Offences Act No. 3 of 2006. In the alternative he was charged with the offence of indecent act with a girl under the age of 12 years contrary to Section 11 (1) of the same Act. Having denied the offence the prosecution called evidence leading to the conviction of the appellant whereupon he was sentenced to serve 10 years imprisonment. This appeal follows the said conviction and sentence.

In his grounds of appeal he alleges that the case was not proved to the required standards and that the court was wrong to have relied on the evidence of P.W. 2. Further there was no proper medical evidence that implicated him and finally, his defence was not considered.

The appellant was the step father of the complainant. They lived together. On the day of the alleged offence both the appellant and the complainant were in the house. The appellant asked the complainant to give him his shoes which were under the bed. As the complainant walked out the appellant held her and pushed her on to the bed, in the process holding her mouth. Her aunt by the name E then came in. That is when the appellant left her. It is alleged that this was not the first time the appellant was doing this to the complainant. When E came in she found the appellant lying on the complainant on bed with her clothes pulled up. The complainant however said that she had not been defiled and was afraid to tell her mother because she had told her about the appellant's conduct before and did nothing. She knew the appellant well and he lived with her sister. Police were called and the appellant was arrested.

The medical examination on the complainant by P.W. 5, the Doctor, confirmed she had been defiled. In an unsworn statement in defence, the appellant denied the offence and implied that this was a domestic issue between his wives which may have been caused by the complainant's mother who did not like the co-wife. The judgment of the learned trial magistrate was extremely brief. However, it captured the salient facts and material evidence of what transpired on the date of the alleged offence. She also observed that the appellant had not challenged that evidence.

My assessment of the judgment is that, even if the learned trial magistrate were to say more, the end result would still have been the same. This is because sufficient evidence was adduced to warrant the conviction. The evidence of P.W. 1 was corroborated by that of P.W. 2 and P.W. 5. The domestic differences if any, that may have existed, played no role in this matter. The charge was proved beyond any reasonable doubt and the sentence imposed was well merited. This appeal is therefore dismissed.

Orders accordingly.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of November, 2012.**

**A. MBOGHOLI MSAGHA**  
**JUDGE**