



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**OF KISII**

**Criminal Appeal 59 of 2007**

**HEZEKIAH OSIRO OSIRO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was charged with defilement of a girl contrary to section 145 (1) of the Penal Code. The particulars of the offence were that on the 22<sup>nd</sup> day of April 2005 at Gem East in Homa Bay District, within Nyanza Province, he had carnal knowledge of M.O., a girl aged under sixteen years. After a full trial, the appellant was convicted and sentenced to seven years' imprisonment. Being aggrieved by the said conviction and sentence the appellant preferred an appeal to this court.

The brief facts as adduced by the prosecution witnesses were that on the material day, M.O. the complainant who was also the first prosecution witness, PW1 was informed by the appellant that her sister who was staying at Gem, had sent the appellant to collect PW1 and take her to her home at Nyakach. The appellant, who was familiar to PW1 produced a handwritten note which PW1 read and believed that it had been written by her sister. PW1, who was staying with her grandmother, PW2, was allowed to accompany the appellant to take her to her sister as aforesaid. PW1 was carried by the appellant on his bicycle but instead of taking her to her sister's home the appellant took her to his house. He told her that her elder sister had granted him permission to take PW1 as his wife. The appellant proceeded to defile the complainant. On the following day the complainant pretended that she was going for a short call and ran away from the appellant. The appellant gave chase and managed to catch up with the complainant and started beating her up. Members of the public intervened and the appellant was apprehended after the young girls explained what had transpired.

The evidence of PW1 was well corroborated by her grandmother, PW2, and PW3, the husband of PW2. A clinical officer, Joel Buta, PW4, testified and produced a P3. His evidence was to the effect that PW1 had indeed been defiled.

The appellant denied the charge that was preferred against him and alleged that there was a grudge between him and one of his cousins known as P.O who caused some people to arrest him and make false accusations against him.

From the evidence on record, it is apparent that the appellant lured the complainant from the home of PW2, cheating her that he had been sent by her elder sister to take her to Nyakach. The appellant ended up taking the young girl to his house and repeatedly defiled her before she managed to escape on the following day. There was medical evidence that the complainant had been defiled. The defence by the appellant was unbelievable and did not dislodge the prosecution evidence. I am therefore satisfied that the appellant's conviction was safe.

As regards sentence the appellant was sentenced to seven years' imprisonment. The sentence is neither harsh nor excessive. I cannot interfere with the same. All in all I find no merits in this appeal and dismiss the same.

DATED, SIGNED AND DELIVERED AT KISII THIS 22 DAY OF July 2009.

**D. MUSINGA**

**JUDGE.**