



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA  
OF KISII**

**Criminal Appeal 204 of 2006**

**OKEROSI MWENCHA ALIAS OGINGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence in the Resident Magistrate's Court at Kehancha, Criminal Case no.1176 of 2005 by M. K. K. SEREM, RM)**

**JUDGMENT**

On 10<sup>th</sup> January, 2006 the appellant was convicted of the charges of **indecent assault** of a female and **assault causing actual bodily harm** contrary to **sections 144(1) and 251** of the **Penal code** respectively. He was sentenced to 10 years' imprisonment on the first count and 5 years' imprisonment on the second count. The sentences were to run concurrently. He was aggrieved by the said sentence and preferred an appeal to this court.

Mr. Kemo, Principal State Counsel, conceded the appeal, and in my view rightly so, on the basis that the learned trial magistrate was a Resident Magistrate at the time. **Section 7** of the **Criminal Procedure Code** does not allow such a magistrate to pass a sentence exceeding 7 years' imprisonment except for offences under sections 278, 308(1) 322 of the Penal Code or under the **Sexual Offences Act, 2006** which came into operation on 21<sup>st</sup> July 2006. The trial court did not have jurisdiction to pass the sentence which it did.

The appellant has been in custody for more than two years. He has been punished sufficiently and I believe he has also had time to reflect on his actions. I allow the appeal and reduce the sentence to the period already served. The appellant is set at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED at Kisii this 7<sup>th</sup> day of March 2008.**

**D. MUSINGA**

**JUDGE.**

Judgment delivered in open court.

Accused present.

Mr. Kemo for the Republic

**D. MUSINGA**

**JUDGE**