



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

Criminal Appeal 85 of 2007

DANCAN ODIWUOR JAIRO APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(From original conviction and sentence in the Senior Resident Magistrate's Court Rongo in
Criminal Case No.192 of 2006**

by D. KEMEI. ESQ., AG.S.R.M)

JUDGMENT

The appellant was charged with attempted defilement contrary to section 145(2) of the Penal Code. The particulars of the offence were that on 3rd day of March, 2006 at Awendo township, the appellant attempted to have carnal knowledge of J.O; a girl under the age of 16 years. After a full trial the appellant was convicted and sentenced to 5 years' imprisonment. He was aggrieved by the said conviction and sentence and preferred an appeal to this court.

He argued that there was no sufficient evidence to warrant his conviction. He further stated that the sentence meted out was harsh and excessive.

The prosecution evidence briefly stated was that on 3rd March, 2006 at about 7.30 p.m. PW1, a girl aged about 16 years, arrived at Awendo Township. She was on her way home for half term holiday and their vehicle was late because it had rained heavily on that day. She found all the vehicles that travel to her home area gone. The appellant found her at the bus stage and offered to give her over night accommodation at his house. Shortly after they arrived at the appellant's house, the appellant attempted to defile the complainant and armed himself with a kitchen knife. The complainant managed to free herself and burst out of the house as she screamed loudly. She left her bag inside the appellant's house.

Thomas Oyier, PW2, a watchman who was guarding a nearby Petrol Station heard the complainant's screams. He shone a torch and saw the complainant running towards him but a man who was following her retreated. Members of the public were attracted to the scene by the girl's screams. PW1 led PW2 and members of the public to the house of the appellant and ordered him to open the door which he did. PW1 identified the appellant as the person who had attempted to defile her. The bag containing PW1's items

was found inside the appellant's house.

The appellant was escorted to Awendo Police Station and P.C. Fredrick Opamisi, PW4, recorded his statement as well as that of PW1 and PW2. The evidence of PW1 and PW2 was also corroborated by that of Richard Okumu Odongo, PW3, who was among members of the public who were attracted to the scene by the screams of PW1.

In his unsworn defence, the appellant merely denied having committed the offence as charged with.

I have reconsidered the entire evidence that was tendered before the trial court. There was over whelming evidence that the appellant lured the complainant to his house, having offered to give her over night accommodation. However, the appellant took advantage of the young girl's predicament and attempted to defile her. The complainant's bag was found inside the house of the appellant and he could not explain how it got there unless her evidence was true. The evidence of PW1 was also well corroborated by that of PW2, PW3 and PW4.

I find and hold that the appellant's conviction was safe and dismiss the appeal against conviction. The sentence of 5 years' imprisonment for such an offence cannot be said to be harsh or excessive. Likewise, I dismiss the appeal against the sentence.

DATED, SIGNED and DELIVERED at KISII this 14th day of October, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

N/A for the Appellant.

Mr. Kemo, Senior Principal State Counsel for the Republic.

D. MUSINGA

JUDGE.