



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL APPEAL NO. 79 OF 2007**

*From the original Conviction and Sentence in Criminal Case No. 421 of 2006 of the Resident Magistrate of Ingutya Court at Wajir.*

**QUARHANE GURE ALI .....APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

This appellant is charged with offences committed on 22/12/2006. By that date the new law sexual offences Act (Act No. 3 of 2000) had come into operation, therefore the particulars of the offence of rape are contained in section 4 of the act namely; Any person who attempts to unlawfully and intentionally.....” is guilty of the offence of rape.

It is clear that the attempt must be unlawfully and intentionally, otherwise no offence is committed.

In the charge sheet aforementioned those words “unlawfully” and “intentionally” are omitted. On the alternative charge the appellant was charged with an offence under Penal Code Section 144 (1). This section was at the time repealed and therefore no charge can be sustained. In these circumstances it is clear the charge sheet is fatally defective.

I agree with the state that the charge cannot be supported and I therefore allow the appeal and quash conviction and set aside sentence imposed on the appellant.

The appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated 25<sup>th</sup> October 2007.

**25/10/2007**

**Khaminwa- Judge**

**Njue – Clerk**

**State Counsel Mr. Kimathi**

**Counsel for Appellant Mr. Rukenya.**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**