

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 56 of 2006

PETER KUBAI MBUGUA ::::::::::::::::::::::::::::::: APPLICANT

=VERSUS=

REPUBLIC :::::::::::::::::::::::::::::::::::::: : RESPONDENT

JUDGMENT

The Accused was convicted for the offence of defilement of a girl contrary to section 145 (1) of the Penal Code. He was sentenced on 20/07/2006 to serve imprisonment for 3 years at Shikusa Borstal Institution.

Upon Consideration, the Respondent concedes to the Appeal. I have considered the record of Appeal. The alleged offence took place at 9.00 p.m.. The Complainant did not have any witness to corroborate her evidence. She said that she was with another girl. The said girl was not called as a witness. The incident took place on 21/01/2006, yet the Accused was arrested on 28/01/2006. The Investigation Officer did not testify to explain the long delay in the arrest of the Accused.

The burden of proof is always on the Prosecution. It can never shift. It was not for the Accused to prove his innocence but for the Prosecution to prove his guilt . The Complainant was taken for medical examination one week later. The P.3 form is misleading in respect of the date it was filled out. The doctor clearly stated that the age of injury was about one week old.

As a result the conviction was not proper. The Respondent does not oppose the Appeal.

I therefore do hereby allow the appeal, set aside the conviction and quash the sentence.

The Appellant shall be released forthwith unless lawfully held. The surety is discharged and may have his Security back.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF NOVEMBER 2007

M.K. IBRAHIM,

JUDGE.
