



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL APEAL 296 OF 2004**

**SAMUEL CHEPSERGON.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From original conviction and sentence in Criminal Case No. 731 OF 2004 of the Resident Magistrate's Court at ELDAMA RAVINE – KAGENDO W.M., RM)*

**JUDGMENT**

The appellant was charged with attempted defilement of a girl contrary to Section 145(2) of the Penal Code. The particulars of the offence were that on the 29<sup>th</sup> May 2004, at [*particulars withheld*] in Koibatek District of the Rift Valley Province, he attempted to defile DJ, a girl aged 4 years. He was convicted on his own plea of guilty and sentenced to five years imprisonment. He appealed against the said sentence saying that the same was harsh and excessive.

Mr. Mugambi, learned state counsel, opposed the said appeal saying that the sentence that was handed down by the trial court was very lenient. He urged the court to dismiss the appeal and instead enhance the sentence.

I have considered the fact that the appellant was convicted on his own plea of guilty and that he was a first offender. He was also drunk when he attempted to defile the child. I do not find the sentence that was pronounced by the trial court to be harsh considering the circumstances under which the offence was committed. I do not find that there is any basis for enhancing the sentence. In the circumstances the appeal against sentence is dismissed and the appellant will have to serve the full sentence.

DATED, SIGNED and DELIVERED at Nakuru this 17<sup>th</sup> day of November, 2006.

**D. MUSINGA**

JUDGE

Judgment delivered in open court in the presence of Miss Opati for the state and the appellant

**D. MUSINGA**

JUDGE