



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

CRIMINAL APPEAL NO.188 OF 2001

**(From original conviction and sentence in Criminal
Case No.524 of 2001 of the Senior Resident Magistrate
Court at NAIVASHA –I.K. MUTAI(R.M.)**

MORRIS OCHIENG SEWE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant MORRIS OCHIENG SEWE was charged and convicted of an offence of DEFILEMENT OF A GIRL contrary to Section 145(1) of the Penal Code. Particulars of charge were:-

“That on the 14 th day of March, 2001. At [particulars withheld] in Nyandarua District within Central Province had Carnal knowledge of R.W.N a girl under the age of 14 years.”

He has appealed against the sentence of 10 years imprisonment and 4 strokes of the cane. The appeal is opposed on grounds the sentence was not excessive.

Looking at the charge facing Appellant, particularly the particulars, it is not a charge known to law. The particulars of the charge have omitted the word "UNLAWFUL" between the words "had" and "carnal". That makes the particulars of the charge fatally defective and they do not disclose any offence known to law. For the Appellant to have been convicted of that charge was wrong. The conviction cannot be allowed to stand and is set aside. The sentence is also set aside.

The Appellant has served only 2 years out of the 10 years Imprisonment. That cannot be said to be a substantive part of the sentence. I will order for a retrial of this case before a court of competent jurisdiction.

Orders accordingly.

JESSIE LESIIT

JUDGE 5.6.2003

Read, signed and delivered in presence of The Appellant

Mr. Onderi for Respondent absent.

JESSIE LESIIT

JUDGE

5.6.2003