

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.382 OF 2000

(From original conviction and sentence in Criminal
Case No.1667/2000 of the Senior Principal Magistrate's
Court at NAIVASHA -B. F. ODHIAMBO (R.M.)

LETEYIU OLE PALAKESU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the conviction and sentence in the Naivasha SPM's Criminal Case No.1667/2000 in which he faced two counts. The first of DEFILEMENT OF A GIRL contrary to Section 145(1) of the Penal Code and a second and alternative charge of INDECENT ASSAULT ON A FEMALE contrary to Section 144 of the Penal Code. I have looked at the particulars of both counts and find that both did not disclose an offence known to law. Section 145(1) of the Penal Code provides:-

“Any person who unlawfully and carnally knows a girl under the age of 14 years is of a felony and is liable to imprisonment with hard labour for 14 years together with corporal punishment.”

It is very clear that for a charge of defilement, the particulars must allege that the offender unlawfully had carnal knowledge of the girl. It is the act of carnal knowledge done “unlawfully” that constitutes this offence.

The particulars of the charge that the Appellant faced and for which he was convicted did not allege that the act carnal knowledge was done unlawfully. The charge did not disclose any offence and the conviction was wrong. Similarly, the alternative count of indecent assault, did not disclose any offence known to law. Section 144(1) of the Penal Code provides:-

“Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony...”

The particulars of the alternative charge of indecent assault for which the Appellant was convicted did not allege in its particulars that the indecent act was **unlawful**. The charge was therefore totally defective and the purported conviction upon it was wrong. Se Achoki –V- Rep Cap No.6/2000(KISUMU)Accordingly, I will quash the conviction and set aside the sentence. The offence of defilement of a girl is a very serious offence with a maximum sentence of 14 years imprisonment and Corporal Punishment with hard labour. The Appellant has not substantially served the sentence imposed..

I will order for a retrial of the case before a competent court.

Orders accordingly.

Dated and delivered at Nakuru this 18th day of March, 2002.

JESSIE LESIIT

JUDGE