

REPUBLIC OF KENYA
IN THE HIGH COURT
AT MOMBASA
(CORAM: OMOLO, AKIWUMI & O'KUBASU, J.J.A.)
CRIMINAL APPEAL NO. 83 OF 2000

BETWEEN

BWANA KOMBO MUHATI APPELLANT
AND
REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya at
Mombasa (Commissioner Shah) dated 7th June, 2000

in
H.C.C.R.A. NO. 77 OF 2000)

JUDGMENT OF THE COURT

This being a second appeal, only matters of law arise for our consideration. The appellant was originally charged with attempted defilement of a girl contrary to section 145(2) of the Penal Code but in the end the magistrate found him guilty of indecent assault of the girl under section 144(1) of the Penal Code. The magistrate said he was doing so under section 179 of the Criminal Procedure Code, but that was of course not correct because, as Mr. Ouma for the appellant correctly points out, the two offences are not minor to each other. But the two offences are clearly cognate and section 186 of the Criminal Procedure Code provides for the situation the magistrate was dealing with. The facts put before him clearly proved the offence of indecent assault and he was right to convict the appellant of that charge.

The superior court confirmed that conviction and there is really no point of law worth our consideration. The appeal is ordered to be and is hereby dismissed.

Dated and delivered at Mombasa this 24th day of July, 2000.

R. S. C. OMOLO

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JUDGE OF APPEAL

A. M. AKIWUMI

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JUDGE OF APPEAL

E. O'KUBASU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR