

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 61 OF 2017

FRED MOMANYI OBUNGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Kahara – RM

dated 25th January 2017 at the Principal Magistrate’s Court

at Keroka in Criminal Case No. 76 of 2017)

JUDGMENT

1. The appellant, FRED MOMANYI OBUNGI, was charged and was convicted on his own plea of guilty on the offence of defilement contrary to section 8(1) and (3) of the Sexual Offences Act (‘the Act’). It was alleged that on the night between 22nd January 2017 and 23rd January 2017 at [particulars withheld] in Borabu District of Nyamira County he caused his penis to intentionally penetrate the vagina of BKO, a child aged 14 years.

2. I have perused the record and I am satisfied that the guilty plea was not unequivocal because the child’s age was doubtful and was not established and given the age and explanation that the child was brought as a wife, there would be a plausible defence under section 8(5) of the Act. Further the medical evidence did not disclose anything on the genitalia that would have amounted to penetration.

3. Consequently, I allow the appeal, the appellant shall remain in custody and shall be taken for retrial at the Keroka Magistrate’s Court on 11th April 2019 to plead afresh to the charges.

Dated and delivered at Kisii this 5th day of April 2019.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.