



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT SIAYA**

**HCCRA NO. 130 OF 2016**

**BETWEEN**

**EDWARD OKEMBA OKEMBA.....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

*(Being an appeal against the original conviction and sentence dated 6<sup>th</sup> October 2016 in Criminal Case No. 345 of 2015 in Siaya Law Court before Hon. C. A. Okore, SRM)*

**JUDGMENT**

1. The Appellant, **EDWARD OKEMBA OKEMBA**, was convicted of the offence of Defilement contrary to **section 8(1) and (3)** of the ***Sexual Offences Act***. It was alleged that on 12<sup>th</sup> June 2015 at [Particulars withheld], Siaya County, he intentionally caused his penis to penetrate the vagina of **LAD**, a child aged 14 years. He contested the conviction on the grounds that the prosecution did not prove its case and that the trial magistrate did not consider his defence.
2. In order to prove defilement, the prosecution must establish penetration of a child. After a *voire dire*, LAD, PW1, testified that at about 7.00pm on 12<sup>th</sup> June 2015 while she was cooking in the kitchen alone, the appellant who was a watchman came pulled her to the guard house, threatened to cut her with a panga, proceeded to remove her clothes then sexually assaulted her. He told her not to scream or else he would cut her neck.
3. After the appellant left, PW 1 ran home and informed her mother, PW 2 who testified that on the material day she did not find her. When he called her out she came crying and narrated to her what took place. PW 2 confirmed that PW 1 told her that the appellant is the one who defiled her.
4. PW 2 immediately reported to a village elder who also informed the area Assistant Chief, PW 3. PW 3 received them and they proceeded to the local health centre but were referred to Siaya District Hospital for proper treatment. A Clinical Officer at Siaya District Hospital, PW 4, confirmed that PW 1 was examined on 13<sup>th</sup> June 2015. He noted that PW 1's genitalia were slightly lacerated and the vaginal wall bruised. Her hymen was reddened and there were lacerations on the cervix. He opined that penetration had taken place. He also confirmed that the dentist conducted an age assessment and concluded that the child was aged 14 years.
5. The appellant opted to exercise his right to remain silent.
6. The totality of the evidence is that PW 1 gave clear evidence of penetration. Her testimony was corroborated by the medical evidence and her credibility enhanced by the fact that she reported the incident immediately to PW2. Further, the appellant was well known to PW 1 and PW 2 as he was a watchman in the neighbourhood, a fact confirmed by PW 2, the Assistant Chief.
7. The prosecution proved the case and the applicable sentence of 20 years' imprisonment was consistent with evidence that the child was aged 14 years.
8. The appeal is dismissed.

**SIGNED, DATED and DELIVERED at SIAYA this 2<sup>nd</sup> day of February 2018**

**D.S. MAJANJA**

**JUDGE**

Appellant in Person

Ms Odumba, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State

Court Assistants: Laban O. Odhiambo, Ishmael Orwa