

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

HCCRA NO. 99 OF 2016

BETWEEN

EDWARD OWINO ODUOR.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence

dated 23rd October 2015 in Criminal Case No. 287 of 2015

at Ukwala Law Court before Hon. C. N. Wanyama, RM)

JUDGMENT

1. The appellant, **EDWARD OWINO ODUOR**, was charged, tried and convicted of the offence of attempted defilement contrary to **section 9(1) and (2) of the *Sexual Offences Act***. It was alleged that on 3rd July 2015 at Simenya sub-location, Ugunja District, Siaya County he intentionally and unlawfully attempted to cause his penis to penetrate the vagina of MAL a child aged 10 years.
2. At the hearing of the appeal the appellant submitted that the offence of attempt was not proved and he only assaulted MAL (PW 1).
3. I have reviewed all the evidence and the testimony of PW 1, who was sworn after a *voire dire*, is that on 3rd July 2015 while she was at home the appellant came to their house, followed her and started strangling her. He removed her panty and when she started screaming, he closed her mouth. Her grandfather, PW2, came in and found the appellant trying to push the door from inside as he tried to open it. He locked the door and called the neighbours who came. The police arrived and he was arrested. PW 1's mother, PW 3 took her to the hospital where she was examined by PW 5, the Clinical Officer who noted the child was in pain, had tenderness on the neck, swollen upper lip. There was no penetration.
4. In his sworn defence, the appellant denied the offence and stated that on the material day he had gone to payment at PW 2's house when he found a girl whom he asked for water but she started insulting him. PW 2 and other people came and arrested him.
5. On the basis of the evidence I am satisfied that the prosecution proved attempted defilement. The appellant was with PW 1, he removed her pant and even strangled her and he would have completed the act but for the intervention of PW 2. His defence confirms that he was at the scene and he was known to PW 1.
6. The appeal is dismissed.

SIGNED, DATED and DELIVERED at SIAYA this 2nd 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