



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT SIAYA**  
**CRIMINAL APPEAL NO. 120 OF 2016**

**BETWEEN**

**JOSEPH OTIENO OBADHA.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against the original conviction and sentence*

*dated 22<sup>nd</sup> September 2016 in Criminal Case No. 887 of 2015*

*at Siaya Law Courts before Hon. C.A. Okore, SRM)*

**JUDGMENT**

1. The appellant, **OBADHA JOSEPH OTIENO alias REGAN**, was charged and convicted of the offence of defilement contrary to **section 8(1) and (3)** of the ***Sexual Offences Act***. The particulars of the offence were that on the night of 15<sup>th</sup> - 16<sup>th</sup> August 2014 at [particulars withheld] Sub-location, Gem Sub-county, Siaya County, he intentionally caused his penis to penetrate the anus of E A O, a child aged 15 years. He was sentenced to 20 years' imprisonment.
2. The thrust of the appeal is that the prosecution did not prove its case, that the evidence was contradictory and that the medical evidence did not implicate him.
3. I have reviewed the entire evidence and the sworn testimony of PW 1 is clear that on the evening of 15<sup>th</sup> August 2014 as she was going to Kodiaga Centre after being sent by the grandmother, PW 2, she was abducted by the appellant whom she knew as a neighbour. The appellant forced her into his house and that night he proceeded to sodomise her the whole night. She only managed to escape when he went for a short call.
4. PW 2 recalled that PW 1 had disappeared on the previous day and returned in the morning limping. PW 1 told her what the appellant had done. PW 2 took PW 1 to Yala District Hospital. PW 3, a Clinical Officer confirmed that PW1 was treated at the hospital. According to the anal examination done on 16<sup>th</sup> August 2016, there was blood in stool and bruises on the upper part of the anus which was painful. She concluded there was penetration.
5. PW 5, the police officer who took over from the original Investigating Officer, told the Court that the incident was reported on 16<sup>th</sup> August 2015 and the appellant was arrested in December 2015 since he had disappeared from the village.

6. The accused denied the charges and said that he could not recall what happened on the material night. He alleged that the case against him was the result of a grudge as a result of the land case.

7. The testimony of PW 1 was very clear about penetration of the anus. “*Penetration*” under **section 2** of the **Act** means, “*the partial or complete insertion of the genital organs of a person into the genital organs of another person.*” The anus is included in the definition of genital organ under the **Act**. Her testimony was corroborated by the fact that she told PW 2 what happened immediately after the incident when she escaped from the appellant’s house. The medical evidence also fortified the evidence of anal penetration.

8. Further the accused was well known to PW 1 and PW 2 and the appellant admitted as much. The issue of a grudge was not put to PW 1 and PW 2 in cross examination and was indeed an afterthought. The appellant’s disappearance from the village after the doing the felonious act only augmented his guilt. The totality of the evidence is that the prosecution proved penetration and that the appellant was the perpetrator.

9. There is no doubt that the child’ age was between 15-16 years, as confirmed by the age assessment.

10. I affirm the conviction and sentence. The appeal is dismissed.

**DATED, SIGNED 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