



REPUBLIC OF KENYA

IN THE HIGH COURT

AT SIAYA

CRIMINAL APPEAL NO. 90 OF 2016

BETWEEN

JOSEPH WANGO OMONDI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence

dated 12th August 2016 in Criminal Case No. 226 of 2015

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

JUDGMENT

1. The appellant, **JOSEPH WANGO OMONDI**, was charged, tried and convicted of two counts. The first was that of attempted defilement contrary to **section 9(1) and (2)** of the ***Sexual Offences Act*** and the alternative count was causing grievous harm contrary to **section 234** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. He was sentenced to 10 years on the first count and 3 years on the alternative count with both sentences to run concurrently.

2. The principal ground for challenging this conviction is that the prosecution did not prove its case, that the evidence was contradictory and that the appellant was not identified and the person who defiled the complainant.

3. As a first appellate court, I have reviewed all the evidence and I find as follows. The complainant, PW 1, testified that she was 18 years old and on 22nd February 2015 she had gone to the river where she met the appellant with a panga. He asked her to remove her clothes and held her but she managed to free herself after she had been cut on the right thumb. The injury was confirmed by PW 4, the Clinical Officer who produced the P3 Form filled by his colleague who examined her on 26th February 2013.

4. After the incident, PW 1 reported to the sister PW 2 who testified that she had followed her sister to the river and seen the appellant. She heard PW 1 shouting and saw her running away after freeing herself from the appellant. She also saw the cut finger.

5. PW 1 and PW 2 reported the incident to their father PW 3 who took them to the Segga Police Station. PW 1 and PW 2 told him that it was the appellant who assaulted PW 1 but since he had disappeared from

the village, he was arrested 8 months later when identified by PW 3.

6. In his defence, the appellant denied the offence and told the court that on the material day he had gone to work at Matayos to do construction work.

7. I am satisfied that the attempt was proved for the reason that the appellant forced PW 1 to remove her clothes under the threat and infliction of violence. The incident took place at daytime and he was a person known to PW 1 and PW 2. His alibi when considered alongside the credible testimony of PW 1 and PW 2 is clearly false. His guilt is confirmed by the fact that he disappeared from the village until he was arrested months later.

8. I affirm the conviction on the principal count. The sentence on the principal charge is the minimum sentence and it is also affirmed. Since the appellant was convicted on the principal count, the conviction and sentence on the alternative count is quashed.

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