

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 61 OF 2016

WILFRED OYIEKO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. J. Mwaniki – PM dated 11th October 2016 at the Principal Magistrate’s Court at Keroka in Criminal Case No. 1067 of 2014)

JUDGMENT

1. The appellant, WILFRED OYIEKO, was charged with the offence of defilement contrary to **section 8(1)** as read with **Section 8(3)** of the Sexual Offences Act (“the Act”). He was however convicted of the alternative count of committing an indecent act with the child contrary to **section 11(1)** of the Act in that on 15th October 2014, he intentionally touched the vagina of CNJ, a child aged 12 years with his penis.

2. I agree with learned counsel for the respondent that the conviction based on the testimony of only one witness, the complainant, PW 1, was prejudicial to the appellant. Although, the prosecution is entitled to present only one witness to support its case and a conviction may be supported by that witness, the appellant was denied the opportunity to test all the available prosecution evidence which may or may not be exculpatory.

3. Since the trial was legal and proper, this is not a proper case to order a re-trial. I also note that the reason why the prosecution case was closed was due to the unexplained lack of witnesses. A re-trial therefore may not be feasible.

4. I allow the appeal and quash the conviction and sentence. The appellant is set free unless otherwise lawfully held.

Dated and delivered at Kisii this 14th day of November 2018.

D.S MAJANJA

JUDGE

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

Appellant in person.