



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT KISII
Criminal Appeal 155 of 2006**

ERICK ONGIRI OIRA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence in the Chief Magistrate's Court

at Kisii Criminal Case No.273 of 2005 by E. Olwande – R.M.)

JUDGMENT

The appellant was charged with attempted defilement of a girl contrary to section 145 (2) of the Penal Code. The particulars of the offence were that on the 17th day of February 2005 at M[particulars withheld] sub-location of Kisii Central District, the appellant attempted to have carnal knowledge of M.K, a girl under the age of 16 years. The appellant was tried, convicted and sentenced to 4 years' imprisonment with hard labour. The appellant was aggrieved by the said conviction and sentence and preferred an appeal to this court.

The complainant, M. K, testified that on the material day she was washing clothes at their home at around

5.00 p.m. when the appellant, whom she knew well and was a friend to her brother called her. He enquired about the whereabouts of the complainant's brother. The complainant told him that she did not know where he was. Shortly thereafter the appellant was called by one of his friends and he went. After a short while, the complainant heard the appellant calling her when he was in their kitchen. When she answered and moved towards the kitchen, the appellant dragged her into the kitchen and shut the door. The complainant screamed but no one went to her rescue.

Meanwhile, the appellant threw the complainant to a bed, which was in the kitchen, grabbed her neck and tore the complainant's dress and panty. Luckily for the complainant, her mother suddenly entered the kitchen. The appellant ran into a corner. The complainant's mother attempted to get hold of the appellant but the appellant beat her up and ran away. The incident was reported to the area chief and the police.

The complainant's mother corroborated the evidence of her daughter in all material aspects. The appellant was arrested by the area chief after the police issued an arrest order against him.

In his unsworn defence, the appellant stated that he knew nothing about the offence which he was alleged to have committed, adding that he was not at the scene on the material day.

The complainant knew the appellant very well. He was a close neighbour and a friend to her brother. The offence was committed in broad daylight. There was no possibility of any mistake in identification of the appellant, in fact it was recognition. The evidence against the appellant was overwhelming. The complainant's torn panty was produced in court. The appellant's conviction was safe.

As regards the sentence that was meted out by the trial court, the same was neither harsh nor excessive. I find no merit in this appeal and dismiss it in its entirety.

DATED, SIGNED and DELIVERED at KISII this 30th day of July, 2008.

D. MUSINGA

JUDGE.

Delivered in open court in the presence of:

N/A for the Appellant

Mr. Kemo, Senior Principal State Counsel for the Republic

D. MUSINGA

JUDGE.