**Achoki v Republic**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of judgment:** 23 March 2000

**Case Number:** 6/00

**Before:** Omolo, Lakha and Bosire JJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Crime – Attempted rape – Elements of the charge – Section 141(1) – Penal Code (Chapter 63).*

*[2] Criminal procedure – Charge – Particulars of rape and indecent assault.*

**Editor’s Summary**

A was charged on a count of attempted rape with an alternative count of indecent assault. He was found guilty in the Magistrate’s Court and sentenced to life imprisonment. On appeal to the High Court, the sentence was reduced to seven years with hard labour. On further appeal, the Court considered the particulars of the charge, wherein it was charged that the accused had been “attempted to have carnal knowledge of [the victim]”.

**Held** – A charge of rape (under section 141(1) of the Penal Code (Chapter 63)) must allege in its particulars that the act of sexual intercourse was unlawful and was without the consent of the woman or girl. The Appellant was wrongly convicted on this charge.

It was still open to the court to make a finding on the alternative charge of indecent assault (under section 44(1) of the Penal Code). On the facts, the Appellant would be convicted on this alternative charge and sentenced to four years with hard labour