



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL APPEAL NO. 81 OF 2018**

**HENRY KIPLIMO MARITIM.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against the sentence in Criminal Case Number 78 of 2018 delivered on 28/09/2018 by Hon. P.W Wasike (SRM) at Eldoret Law Courts)*

**JUDGMENT**

1. The Appellant was charged with the offence of defilement contrary to **section 8(1)** as read with **section 8(2)** of the **Sexual Offences Act No. 3 of 2006**. The particulars of the offence were that on the 8<sup>th</sup> day of July 2018 at [Particulars Withheld] village within Nandi County, the Appellant intentionally and unlawfully caused his penis to penetrate the anus of EKK (name withheld), a boy aged 4 and ½ years.
2. The Appellant was charged with an alternative charge of committing an indecent act with a child, contrary to **section 11(1)** of the **Sexual Offences Act**.
3. The particulars of the offence are that on the 8<sup>th</sup> day of July 2018 at [Particulars Withheld] village within Nandi County, the appellant intentionally and unlawfully caused his penis to penetrate the anus of EKK (name withheld), a boy aged 4 and ½ years.
4. The Appellant was convicted on his own plea of guilty on the principal charge and was sentenced to life imprisonment. He subsequently filed this appeal against sentence only.
5. In his grounds of appeal, the Appellant submits that he was deceived by the police to plead guilty to the offence and in his view this was in violation of the provisions of **Article 59(1)(d)** of the **Constitution of Kenya 2010**. He prays for a retrial so that he can be accorded a fair trial and that he is ready to defend himself and challenge the prosecution's evidence.
6. In opposition, the learned state counsel M/s Okok submits on behalf of the state that, the trial court did warn the Appellant that the charge he faced carried a life sentence upon conviction before his plea of guilty was entered. Further, that the Appellant was given ample time to contemplate his plea and the sentence it carried and the facts were read to him in a language he understood. Counsel contends that the sentence was proper in light of the age of the complainant who would be traumatised for life and urged the court not to interfere with the sentence.
7. The chronology of events on the record before me is that when the charge was first read to the Appellant 10<sup>th</sup> July 2018 he pleaded not guilty. He returned to court on 17<sup>th</sup> August 2018 and indicated that he wanted to change his plea to plead guilty. The court did warn him that the offence carried a life sentence upon conviction and he was sent away to contemplate the consequences if he pleaded guilty. When the Appellant was produce before the court on 14<sup>th</sup> September 2018 he still pleaded guilty and again on 28<sup>th</sup> September 2018, he maintained the plea of guilty and told the court that he was aware that he would be sentenced to life imprisonment upon conviction.
8. He confirmed that he understood the charge. The facts of the case were read to him in Kiswahili which was the language of his choice. The Appellant confirmed that he understood the charges and the explanation of the court that the charge carried life imprisonment upon conviction. He admitted the facts to be correct.
9. The Court of Appeal identified the situations in which a conviction based on a plea of guilty can be interfered with in the case of **Alexander Lukoye Malika vs. Republic [2015] eKLR** as follows:

**“A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere**

where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the Appellant could not in law have been convicted of the offence charged.”

10. The requirements for recording a guilty plea provided for in section 207 of the Criminal Procedure Code, were elucidated in **Adan vs. Republic** [1973] E.A 445 thus:

- i. The charge and all the essential ingredients of the offence should be read to the accused in his language or in a language he understands.**
- ii. The accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded.**
- iii. The prosecution should immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or add any relevant facts.**
- iv. If the accused does not agree with the facts or raises any question as to his guilt, his reply must be recorded and a change of plea entered.**
- v. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded.**

11. An outline of the proceedings in the instant case shows that the trial magistrate scrupulously followed the procedure provided in **Adan vs. Republic** and the facts of the offence were read out to the Appellant who admitted that they were true. The court deferred the reading of the facts to another date to give him time to ponder the gravity of the charge.

12. On the sentence imposed upon the Appellant, I had recourse to the decision of the Court of Appeal in **Shadrack Kipkoech Kogo vs. R. Eldoret Criminal Appeal No. 253 of 2003**, in which the court had this to say:

**“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka –vs- R. [1989] KLR 306).”**

13. I have considered the circumstances under which the offence was committed and the age of the complainant who was a child of tender years. I also note that from the record, there was no dispute that the Appellant was not a first offender. The prosecution informed the court that he had been previously convicted and sentenced for defiling a thirteen year old minor and the Appellant confirmed that that was correct. He was convicted on his own plea of guilty.

14. From the foregoing there is no room to doubt that the guilty plea was unequivocal and the sentence imposed was appropriate. I therefore find no reason to interfere with the sentence imposed upon the Appellant by the trial court.

In the premise, the appeal is found to be unmeritorious and is accordingly dismissed.

**PREPARED, DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF OCTOBER, 2020.**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup> DAY OF OCTOBER, 2020.**

.....

**H. A. OMONDI**

**HIGH COURT JUDGE**