



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 210 OF 2016**

**MISIKO POELA BUCHUNJU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence dated 18/7/2016 in Criminal Case No. 210 of 2016 in the Senior Principal Magistrate's court at Kimilili, R. –vs- Misiko Poela Buchunju).*

**J U D G M E N T**

The appellant was convicted on his own plea of guilty and was sentenced to twenty (20) years imprisonment in respect of the offence of defilement contrary to **Section 8(1)(4) of the Sexual Offences Act No. 3 of 2006**.

In his petition of appeal to this court, the appellant has raised 4 grounds. In ground 1, the appellant has stated that he pleaded guilty to the charges without knowing the penal consequences. Additionally, he has stated that the court did not inform him of the consequences of his plea of guilty.

In ground 2, he has also stated that the prosecution took advantage of him since he did not know the law and was misled by the prosecution to plead guilty.

In ground 3, the appellant has faulted the trial court in failing to make sure that the prosecution were required to comply with the provision of **Article 50(2)(j) of the Constitution** in that he was denied the opportunity to prepare and cross – examine the witnesses.

Finally, he has faulted the trial court for convicting and sentencing him on his own plea of guilty without evaluating the medical evidence which did not prove any penetration.

During the hearing of the appeal, Ms Nyakibia conceded the appeal, but applied for a re-trial.

I have considered the grounds of appeal and the statement of facts in support of the offence. As a result, I find that the plea of guilty was equivocal. I therefore set aside the conviction and sentence recorded against the appellant. Since the plea was equivocal, I hereby order a re-trial of the appellant to be tried before another magistrate, other than the one who convicted and sentenced him.

In the meantime, the appellant will be remanded in custody pending his being produced before the Chief Magistrate's Court for plea on 13<sup>th</sup> August, 2019.

**Judgment signed, dated and delivered at Bungoma this 9th day of August, 2019 in the presence of the appellant and Ms Nyakibia for the Respondent.**

**J. M. Bwonwong'a.**

**J U D G E**

**9<sup>th</sup> August, 2019.**