



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 26 OF 2018**

**JACKSON LETAYA LEJA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the judgement, conviction and sentence dated 30<sup>th</sup> November 2017 in the Senior Resident Magistrate's Court at Kilgoris in Criminal Case No. 1270 2015, Republic v Jackson Letaya Leja)*

**JUDGEMENT**

1. The appellant has appealed against his conviction and sentence of life imprisonment in respect of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2006.
2. The state conceded both the conviction and sentence, since the second succeeding magistrate (Hon Matutu) did not comply with section 200 of the Criminal Procedure Code (Cap75) Laws of Kenya.
3. In this court, the appellant raised seven grounds of appeal in his petition.
4. The evidence of the complainant (EK), Pw 1 was that she had sexual intercourse with the appellant twice in a lodging in Kilgoris. She had known the appellant before these incidents. Later she reported these incidents to her mother (MG the initials of her name). She was then taken to hospital for medical examination. Upon examination by Samuel Sankei (Pw 4), who was the clinical officer at Transmara District hospital. Pw 4 concluded that she had been defiled.
5. The appellant was later arrested and charged with this offence. In his sworn defence evidence, the appellant denied the offence. He testified that the complainant was taken to his house by his wife. He then asked his wife, where she got the complainant from. The wife told him that the complainant ran away from her parents, who were beating her and was going to her grandparents at Nyangusu. He then advised his wife to take the complainant to the chief, the following day. On 8<sup>th</sup> September 2015, the father of the complainant asked him about the affair. The father told the appellant to give him land or else, he was to report him to the police. He was eventually arrested and charged with this offence.
6. Mr. Omwega for the state applied for a re-trial after conceding the entire appeal. He rightly conceded the appeal because the second magistrate (Hon Matutu) did not explain to the appellant his rights under section 200 (3) of the Criminal Procedure Code. I find that he had to be explained his rights to recall all witnesses who had testified before the first magistrate. I further find that the failure to do so was fatal to the conviction and sentence.
7. The only issue for consideration is whether I should order a re-trial. I find that the potentially admissible evidence might lead to a conviction. I find that this is a serious offence that carries a sentence of life imprisonment.
8. In the circumstances, I hereby quash both the conviction and sentence imposed upon the appellant. The appellant has to be re-tried before another magistrate other than Hon. Matutu.
9. In the meantime, the appellant will be kept in custody, pending his being produced in the court of the magistrate at Kilgoris as soon as practicable.

Judgement signed, dated and delivered in open court at Narok this 24<sup>th</sup> day of September 2019 in the presence of Mr. Bigogo for the appellant and Mr. Mwangi for the respondent.

**J. M. BWONWONG'A**

**JUDGE**

**24/9/2019**