



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 145 OF 2017**

**CORAM: D.S. MAJANJA J.**

**BETWEEN**

**JOSHUA MWIRIGI M'AMBUTU.....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. L. Ambasi, CM dated 7<sup>th</sup> November 2017 at the Chief Magistrate's Court at Meru in Criminal Case No. 86 of 2016)*

**JUDGMENT**

1. The appellant **JOSHUA MWIRIGI M'AMBUTU**, was charged with the offence of the defilement contrary to **section 8(1) and (2)** of the **Sexual Offences Act**. It was alleged in the that on 29<sup>th</sup> September 2015 in Buuri District within Meru County, he intentionally caused his penis to penetrate the vagina of L N, a child aged 6 years.

2. Having perused the proceedings, I note that the appellant was not given an opportunity to make his defence. When he raised the issue that he had filed an application in the High Court, it was incumbent on the trial magistrate to inquire about the same particularly given that the accused was unrepresented.

3. Accordingly, the conviction and sentence are quashed. The accused shall be remanded in custody until **6<sup>th</sup> June, 2018** when he shall be taken to **Meru Chief Magistrate's Court** for retrial before any magistrate other than Hon.L. Ambasi, Chief Magistrate.

**DATED and DELIVERED at MERU this 29<sup>th</sup> day of May 2018.**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Namiti, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.