



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 84 OF 2016

MARGARET LESIAYI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Maralal Principal Magistrate's Court Criminal Case No. 613 of 2013 by Hon. B S Khapoya Ag Senior Resident Magistrate on 12th September 2013).

JUDGMENT

1. **MARGARET LESIAYI** was charged before Maralal Principal Magistrates court with the **offence of making false allegations contrary to Section 38 as read with Section 11(1) and 20 (1) of the Sexual Offences Act No.3 of 2006**. She pleaded guilty and was sentenced to serve 10 years imprisonment.

2. Although by this appeal Margaret sought to appeal against that sentence the state through Senior Principal Prosecution Counsel conceded to the appeal against conviction on the basis that **Section 38 of Act 3 of 2006**, under which Margaret was charged was repealed by **Act 12 of 2012**.

3. Indeed that is correct. It follows that Margaret was charged under a Section of the Law that does not exist. The prosecution is required, under the Law, to charge a person with an offence known in Law. This was clearly stated in the case of **SIGILANI – VS - REPUBLIC [2004] 2 KLR 480**, where court held that:

“The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence charged should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to a specific charge that he can understand. It will also enable an accused person to prepare his defence.

4. Margaret Lesiayi was charged with an offence that does not exist in law. That being so her conviction was a nullity. **Accordingly her conviction is quashed and her sentence is set aside. This court orders that she be released unless she is otherwise lawfully held.**

DATED AND DELIVERED AT NANYUKI THIS 29TH DAY OF MARCH 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Ndungu

Appellant: Margaret Lesiayi.....

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE