

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 516 OF 2013

(Appeal from original Conviction and Sentence in Murang'a CM Criminal

Case No 21 of 2013 – B Ochieng, Ag CM)

JAMES MUIYORO KAGURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, **James Muiyoro Kaguru**, pleaded guilty to the offence of **attempted defilement** contrary to **section 9(2)** of the **Sexual Offences Act, No 3 of 2006**. Unfortunately the trial court did not formally convict him as required in mandatory terms by **section 207(2)** of the **Criminal Procedure Code**. That subsection is in the following words in the relevant part -

“(2) If the accused person admits the truth of the charge otherwise than by a plea agreement, his admission shall be rendered as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided....” (Emphasis supplied)

2. Without a formal conviction the appeal must be allowed, and learned prosecution counsel properly conceded the appeal. Learned counsel also, properly, did not seek a retrial as the Appellant has already served over 3 years of his 10-year sentence.

3. In the event, I will allow this appeal. The sentence passed against the Appellant without a formal conviction is hereby set aside. He shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANGA THIS 24TH DAY OF MARCH 2017