



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL APPEAL NO.487 OF 2013**

**AMOS BARAZA KERE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in SO No.2 of 2013 of the Senior Principal Magistrate's Court at Murang'a by Hon. J.J Masiga – Resident Magistrate)*

**JUDGMENT**

The appellant, **AMOS BARAZA KERE**, was convicted of the offence of defilement contrary to section 8 (1) (3) (sic) of the Sexual Offences Act No. 3 of 2006.

The particulars of the offences were that on 27<sup>th</sup> January 2013 in Kahuro District of Murang'a County, intentionally caused his penis to penetrate the vagina of **T.W.K**, a child aged 15 years.

He was sentenced to serve twenty years imprisonment.

He now appeals against both conviction and sentence.

The appellant was represented by Mr. Sospeter Nyongesa, learned counsel. He raised eight grounds of appeal in his amended petition of appeal.

The state conceded the appeal through M/s. Lydia Wang'ombe, the learned counsel.

Mr. Nyongesa for the appellant submitted that the record does not indicate whether any of the witnesses was sworn before testifying.

This was the basis on which M/s. Wang'ombe Conceded. Upon my perusal of the typed and the original record of proceedings I confirmed the same. Section 151 of the Criminal procedure Code provides as follows:

**Every witness in a criminal cause or matter shall be examined upon oath, and the court before which any witness shall appear shall have full power and authority to administer the usual oath.**

This omission by the trial court rendered the trial a nullity and as was held in **Mwangi Vs. Republic (2006) 2 KLR 94** is liable to an order for retrial. I therefore declare the entire trial a nullity. I quash the conviction and set aside the sentence.

Since I am remitting this case to the lower court for retrial, I do not wish to comment on any other grounds that were raised except to point out that the charge in the substantive charge should read "**contrary to section 8(3)**" and not "**... 8(1) 3**"

The appellant to be taken to Murang'a chief Magistrate's court for plea and any other order on 26.8.2016. In the interest of justice the case should be given priority hearing dates and where practicable to be heard on a day to day basis by a magistrate of competent jurisdiction other than Hon. J.J Masiga.

In the event that the appellant may be found guilty, the trial magistrate must factor the sentence that he has already served.

Orders accordingly.

**DATED at MURANG'A this 19<sup>th</sup> day of August 2016**

**KIARIE WAWERU KIARIE**

**JUDGE**