



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPEAL NO. 74 OF 2014

MUTUKU MUOKA APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. S.A. Ogoto Resident Magistrate delivered on 29/4/2014 in Mutomo Senior Resident Magistrate Sexual Offence No. 10 of 2014)

(Before Hon. B. Thurairaja J)

J U D G M E N T

1. The Appellant, **Mutuku Moaka**, was charged with the offence of Defilement contrary to section 8 (1) as read with section 8 (3) of the Sexual Offences Act No. 3 of 2006.

The particulars of the offence were that “on the 9th

April 2014 3.50p.m in **Ikutha** District within Kitui county intentionally caused his penis to penetrate the vagina of **S M** a child aged **12 years**”.

2. In the alternative, the Appellant was charged with committing an indecent Act with a child contrary to section 11(1) of Sexual Offences act No. 3 of 2006.

The particulars of the charge were that “on the 9th

April 2014 3.50p.m in **Ikutha** District within Kitui county intentionally touched the vagina of **S M** a child aged **12 years**”.

3. When the Appellant was arraigned before the trial Magistrate, he pleaded not guilty. After the complainant pw1 testified, the Appellant changed his plea to that of guilty. The facts of the offence were read out to the Appellant in kikamba language which the Appellant understood. The Appellant accepted the facts as correct and was convicted and sentenced to 20 years imprisonment in the main count for the offence of defilement.

4. The Appellant was aggrieved by both the conviction and sentence and appealed in this court.

The grounds of Appeal can be summarized as follows:

- a. That the Appellant did not understand the charge or the trial process.
- b. That the Appellant's mitigation relating to his age and family background was not considered by the trial court.
- c. That the sentence is harsh.

5. During the hearing of the appeal, the Appellant relied on written submissions which I have duly considered.

6. The Appeal was opposed by the State, the learned counsel to the State submitted on the legality of the sentence

7. The Trial Court complied with all the procedure for plea taking. See for example, **Adan vs Republic (1973) EA LR** where it states as follows:-

The manner in which a plea of guilty should be recorded is:

- a) *The trial magistrate or judge should read and explain to the accused the charge and all the ingredients in the accused's language or in a language he understands;*
- b) *He should then record the accused's own words and if they are an admission, a plea of guilty should be recorded.*
- c) *The prosecution may then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to any relevant facts.*
- d) *If the accused does not agree to the facts or raises any question of his guilt his reply must be recorded and a change of plea entered but if there is no change of plea, a conviction should be recorded together with a statement of the facts relevant to sentence the accused's reply.*

8. The facts of the case revealed the offence of defilement as charged. The complainant was 12 years old and penetration had occurred. The sentence is within the law. No illegality disclosed. The appeal has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Kitui this 29th day of January 2015.

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B. THURANIRA JADEN

JUDGE