



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 52 OF 2011

ROBERT KIPROTICH RONO..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the Conviction and Sentence by the Honourable N.Wairimu, Resident Magistrate at Kericho in Sexual

Offences No. 49 of 2011 on 3.10.2011)

J U D G M E N T

1. **Robert Kiprotich Rono** (*appellant*) was charged and convicted of the offence of defilement of a girl aged eight (8) years contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act No. 3 of 2006**.
2. The record shows that the charge was read to the appellant in the morning of 15th September, 2011. The prosecutor applied to read the facts later. The record shows the facts were to be read at 2p.m.
3. Later at 2.45p.m with no indication of the **coram**, the Prosecutor read the facts. The appellant was not reminded of the charge.
4. Its also not clear if there was any clerk in Court and the language the facts were read in.
5. After the facts were read what followed was “*Accused in Mitigation*”
6. There was no conviction but a plea of guilty was entered after mitigation, which is never the case.
7. The whole procedure adopted by the learned trial magistrate is wanting.
8. The appellant was not in the words of the Court of Appeal in **BOIT V R [2002] 1 KLR 815** warned of the consequences of pleading guilty as this was a serious offence carrying a sentence of Life imprisonment.

9. Secondly, the plea cannot be said to be unequivocal when there was no coram, no clerk, no interpretation when facts were presented to the court.

10. I find the whole trial to have been unsatisfactory.

The offence was committed in September, 2011 and the witnesses should be available.

I allow the appeal and set aside the conviction and sentence. It is ordered that the appellant be tried afresh for the offence of defilement. He will be arraigned before the Chief Magistrate Kericho on **29th March, 2015** for plea. The retrial should be concluded within nine(9) months.

Dated, signed and delivered in open court this 26th day of March, 2015

H.I. ONG'UDI

JUDGE

In the presence of:

M/S Kivali for State

Mr. Motanya for Appellant - present

Appellant – present

Lagat– Court Assistant

Interpretation – English/Kipsigis