



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 25 OF 2015

BETWEEN

JACKTON OTIENO ONYANGOAPPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 1328 of 2011 at Principal Magistrates Court at Homa Bay, Hon. O. J. Ongondo, SRM dated on 30th December 2011)

JUDGMENT

1. In the subordinate court, the appellant faced a charge of defilement contrary to **section 8(1) and (2)** of the ***Sexual Offences Act, 2006***. The particulars were that on the 29th day of December 2011 at [Particulars Withheld] Sub-location in Mfangano Island, he intentionally causes his penis to penetrate the vagina of LAO, a child aged 11 years. He also faced a charge of committing an indecent act with a child contrary to **section 11(1)** of the ***Sexual Offences Act*** based on the same facts.
2. The appellant pleaded guilty and was convicted on his own plea of guilty and sentenced to life imprisonment. He now appeals to this court against the conviction on the grounds set out in the petition of appeal which may be summarized as follows: that there was no interpretation done during the hearing of the case, that the court failed to consider his state of health at the time of plea and that he was beaten up and forced to admit the offence before the court.
3. In opposing the appeal and supporting the conviction, Mr Oluoch, learned counsel for the State, submitted that the charge and elements thereof were read to the appellant and the conviction was therefore proper. He submitted that the plea was unequivocal.
4. The requirements recording a guilty plea provided for under **section 207** of the ***Criminal Procedure Code (Chapter 75 Laws of Kenya)*** were elucidated in ***Adan v Republic [1973] E.A. 445*** as follows:-
 - i. The charge and all the essential ingredients of the offence should be read to the accused in his language or in a language he understands
 - ii. The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

- iii. The prosecution should immediately state the facts and the accused should be given an opportunity to dispute or explain the fact or add any relevant facts.
 - iv. If the accused does not agree with the facts or raises any question as to his guilt, his reply must be recorded and a change of plea entered.
 - v. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.
5. The proceedings show that the procedure for recording a guilty plea was adhered to. The charge was read to the appellant in **Dholuo** which is the language he understood and in response, he stated as follows;

It is true. I picked mangoes for her, she ate and after that I had sex with her as she agreed to do anything for me after eating the mangoes.

6. Likewise, when the facts were read to appellant after he had pleaded guilty and he confirmed that the facts were true and after conviction, he requested for a pardon in mitigation. There was nothing to suggest that he had changed his plea. As the child was 11 years old the appellant was sentenced to life imprisonment.
7. The record is clear that the proceedings were translated in Dholuo and apart from confirming the fact that the charges were true, he went on to explain the fact that he had sex with the child. I find it unlikely that the he would have responded to the charges in such detail if he did not understand the nature of the charge and proceedings against him. There was also no allegation from the record that he was forced to plead to the charge. The appellant did not raise the issue either after the facts were read to him or even in mitigation.
8. I am satisfied the appellant's plea of guilty was unequivocal. I affirm the conviction and sentence. The appeal is dismissed.

DATED and DELIVERED at HOMA BAY this 31st day of July 2015

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecution instructed by the Office of the Director of Public Prosecutions for the respondent.