

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARSABIT

CRIMINAL APPEAL NO.08 OF 2015

WARIO HALKANO HASUMA.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.50 of 2014 of the Principal Magistrate's Court at Marsabit by Boaz M.Ombewa – Ag.Principal Magistrate)

JUDGMENT

The Appellant, **WARIO HALKANO HASUMA** , was Charged with an offence of defilement contrary to section 8(1) (2) (sic) of the Sexual Offences Act of 2006. The particulars of the offence were that on 29th January 2014 at Manyatta Wario Duba in Marsabit County, the appellant intentionally caused his penis to penetrate the anus of J.M, a child aged 8 years. The appellant pleaded guilty to the offence. He was convicted and sentenced to life imprisonment. He now appeals against both conviction and sentence.

The Appellant through his then advocate filed four grounds in the supplementary petition of appeal dated on 1st July 2014. At the hearing he highlighted the fourth ground that states as follows:

That the learned trial magistrate erred in law and in facts by conducting the trial while the Appellant did not understand the language of the proceedings.

On this ground the state conceded to the appeal through Mr. Mwangangi, the learned counsel.

The appellant was taken to court on 3rd February 2014. Before his plea was taken, he informed the court that he understood Borana language. This must have been a response to the court on which language he understood. The court must have been alive to the fact that the charge was to be read to the accused in a language he understood. However the record does not state in which language the plea was taken and who did the translation. Section 198 (1) of the CPC provides as follows:

(1)" Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands"

This legal position was emphasized in the case of **Kariuki vs. Republic [1984] KLR 809**.

Since it is not clear whether translation was done, I will allow the appeal. The conviction is therefore quashed and the sentence set aside. There will be a retrial.

The appellant shall be taken to Marsabit Magistrate's Court for plea taking and disposal of the case by any other magistrate other than Hon. Boaz Ombewa. The Appellant to be produced in the Marsabit Principal Magistrate's Court on 9th December 2015.

Orders accordingly.

DATED at Marsabit 8th day of December 2015

KIARIE WAWERU KIARIE

JUDGE