



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 9 of 2011

SIMON NGANGA NGANGIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An Appeal from original conviction and sentence in Molo P.M CR.C.NO. 24 of 2011 by S.M.S. Soita, Principal Magistrate dated 5th January, 2011)

JUDGMENT

The appellant pleaded guilty to the charge of defilement contrary to **Section 8(1) (2)** of the **Sexual Offences Act**. Upon conviction on that plea, the learned Principal Magistrate, S.M.S. Soita, sentenced him to life imprisonment.

He was aggrieved and has challenged that decision in this appeal arguing that:

- i) the conviction was based on hearsay allegations;
- ii) the complainant and other witnesses did not testify before the trial court;
- iii) the appellant was not examined by a medical doctor to link him with the offence;
- iv) the learned trial magistrate failed to consider the appellant's defence;

The appeal was opposed by counsel for the respondent submitting that the sentence was proper and lawful.

Section 348 of the **Criminal Procedure Code** provides that:

“348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and who has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”

However, it is now settled on the authority of **Ndede V. Republic** (1991) KLR 567 that the above section does not impose an absolute bar against the appellant's right of appeal as **Section 207(2)** of the **Criminal Procedure Code** provides that there may be “*sufficient cause*” not to convict and sentence an accused person who has pleaded guilty to the charges.

The grounds relied on by the Appellant are clearly not relevant to the matter at hand. No oral evidence is called where an accused person has pleaded guilty. The complainant and her witnesses were not expected to testify after the appellant's plea of guilty was entered.

Bearing in mind what was stated in the celebrated case of **Adan V. Republic** (1973) EA 445, I am satisfied that the appellant understood the charge he faced and voluntarily pleaded guilty.

It was stated in the **Adan** case (supra) that:

“The courts have always been concerned that an accused person should not be convicted on his own plea unless it was certain that he really understood the charge and had no defence to it. The danger of conviction on an equivocal plea is obviously greatest where the accused is unrepresented, is of limited education and does not speak the language of the court.”

Although the learned magistrate did not warn the appellant of the consequences of pleading guilty to the charge, it is settled that there is no statutory provision for doing so, so long as the court has complied with the safeguards to ensure that the accused person understood the charge, by the court explaining the charge in a language understood by the accused person; that out of his own free-will the accused admitted the offence.

See **Boit V. Republic** (200) KLR pg. 815.

No material has been placed before me to warrant interference with the sentence imposed by the lower court.

The appeal is dismissed.

Dated and Signed at Nakuru this 4th day of February, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 13th day of February, 2013 by Hon. Justice M. A. Anyara Emukule.

JUDGE