



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NUMBER 121 OF 2012

MARTIN MURIITHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Runyenjes 404 of 2008 by D.O. Onyango S.R.M on 16th June, 2008)

JUDGMENT

The appellant was convicted of the offence of unnatural act contrary to section 162(2) of the Penal Code on his own plea of guilty on 16th June, 2008. He was accordingly sentenced to serve 12 years imprisonment.

When the appeal came up for hearing, it was apparent from assessment and observing the appellant that he may have been a child at the time the offence was committed. I directed that he undergoes an age assessment at the Embu General Hospital.

According to the report by Dr Ndungu, a dentist, the appellant, is over 18 years. This report is unhelpful.

Learned counsel for the state, concedes that an enquiry ought to have been conducted at the time the plea was taken to ascertain his age. In the circumstances, she submits that he is entitled to the benefit of doubt and the appeal should be allowed.

I think the suggested course is proper. The appellant appears to have been a child and the record does not reflect that an age assessment was carried out at the material time. He has been in prison for a period of six years.

The order that commands itself to the court is that the appeal is allowed and the conviction quashed. He is set free unless otherwise lawfully held.

D.A.S MAJANJA

JUDGE

16.10.13

Court:

Judgment read and delivered in open court this 16th day of October, 2013

D.A.S MAJANJA

JUDGE

16.10.2013

In the presence of

M/S Aluda for state

Appellant

Njue – Court clerk.