



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 18 OF 2009**

*(From Original Conviction and Sentence in Criminal Case No.830 of 2008 of the Principal Magistrate's Court*

*at Voi: P.N. Ndwiga – S.R.M.)*

**HASSAN MWALEWA**

**MWAVUO.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**HASSAN MWALEWA MWAVUO** the Appellant herein has filed this appeal challenging his conviction and sentence on a charge of **DEFILEMENT CONTRARY TO SECTION 8(1) AS READ WITH SECTION 8(3) OF THE SEXUAL OFFENCES ACT**. The Appellant pleaded guilty to the offence and was ultimately sentenced to serve twenty (20) years imprisonment. He has now appealed against the conviction and sentence.

I have carefully perused the record of the proceedings in the trial court. The Appellant was a young man aged 19 years. At no time did the learned trial magistrate warn or caution the Appellant of the possible consequences of a plea of guilty. In view of the serious nature of sexual offences and the stigma resulting from a conviction thereof not to mention the very strict mandatory sentences provided for under S. 8 of the Sexual Offences Act, it is imperative that a trial magistrate administer a caution to a suspect before entering a plea of guilty. The court ought to enquire from the accused firstly whether he understands the serious nature of the charge he faces and secondly whether he fully understands the legal consequences flowing from a guilty plea. Only when this has been done should a court proceed to record a plea of guilty. Failure by the trial court to so caution the Appellant renders his plea of guilty unequivocal. This is more so in view of the youthful age of the Appellant. In the circumstances and for the reasons above I do allow this appeal. The Appellant's conviction is quashed and the attendant 20 year sentence is set

aside. The Appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and Delivered in Mombasa this 31<sup>st</sup> day of May 2011.**

**M. ODERO**

**JUDGE**

In the presence of:  
Mr. Onserio for State  
Appellant in person