

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal 09 of 2009

DOMINIC KITHI MUNYIRI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT
J U D G M E N T

This appeal arises out of the conviction and sentence of **S.M Mokuu S.R.M Siakago in Criminal Case No. 29 of 2009**. The appellant Dominic Kithi Munyiri intimated on the date of plea that he could not communicate using normal language. The learned trial Magistrate without conducting any inquiry to find out what was wrong with the Accused, or why he could not talk normally ordered that a sign language interpreter be availed.

This was done and the record shows that one Njoki- a sign interpreter assisted to interpret. The matter was heard and the Accused was convicted and sentenced to 10 years imprisonment.

He had been charged with the offence of "***prostituting***" a person with mental disabilities. The record does not actually indicate that PW1 had any mental disabilities. She was treated like any normal witness and for anybody who did not see her, it is impossible to tell what kind of disabilities she had. I agree with counsel for the appellant that medical evidence should have been adduced to establish that the complainant suffered mental disabilities.

It was also important for the magistrate to establish why the appellant could not communicate in court normally-more so if he had even recorded a statement with the police.

My finding therefore is that this appeal was rightly conceded. I allow the same, quash the conviction and set aside the sentence imposed by the learned trial magistrate.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 22nd day of April 2010.

In presence of:-Appellant and Ms Matiru for state