



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 42 of 2009

LAWRENCE BARASA SIFUNA:APPELLANT

~VRS~

REPUBLIC :RESPONDENT
(Appeal from original BGM CM CR. NO.2392 of 2007)
JUDGMENT

The Appellant Lawrence Barasa Sifuna was convicted of the offence of robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to death. He was aggrieved by both the conviction and sentence leading to lodging of this appeal.

The grounds in the petition, the supplementary grounds presented during the hearing and the written submissions precisely address the following:

- a) **That there was no positive identification.**
- b) **That the Appellants constitutional rights were violated in that the language used in court was not indicated.**
- c) **The charge was incurably defective.**
- d) **That evidence of a child was admitted without complying with the law.**

Mr. Ogoti, the Senior Principal State Counsel conceded to the appeal. He said that the complainant was not sworn in when she testified and that her name was not recorded. The judgment is not dated as required by the law. He asked the court to set aside conviction and sentence and order retrial.

On perusal of the appeal record, we agree with the state counsel that PW1's name was not recorded by the court. The language she used to testify is not indicated. It is mandatory that the name of a witness be put on record. This is important in the trial for the Appellant and the court to know who is testifying. This was a serious omission by the trial court.

The language used in court when PW1 testified and when the plea was taken is not indicated. Section 77 (2) of the Constitution provides that an accused person charged with a criminal offence shall be informed of the nature and details of the offence in a language that he understands. Section 198 of the Criminal Procedure Code is also categorical on the language used in court and emphasize that the court must ensure that accused understands the proceedings. Failure to record the language used in court is prejudicial to the accused and renders the proceedings invalid and devoid of any evidential value.

It is a legal requirement that judgment of the court be signed and dated. The Court of appeal in the **CRIMINAL APPEAL NO.97 OF 2003 JOSEPHAT KIGORWE MURURU –VRS- REPUBLIC Court of Appeal at Nyeri** nullified the judgment of a two judge bench on grounds that it was not signed and dated. The trial magistrate in this case signed but did not date the judgment. The omission renders the judgment void for all intents and purposes and we so decree and declare. This appeal is based on the said judgment and as such it follows that there is no appeal. For this reason, we shall not dwell with the other grounds of appeal.

