



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Criminal Appeal 103 of 2009**

GODFREY MATSITSI ..... APPELLANT  
=VERSUS=  
REPUBLIC ..... RESPONDENT

*(An Appeal from the conviction and sentence of A. Alego, Esq. Senior Resident Magistrate at Eldoret delivered on 24<sup>th</sup> June 2009 in CMCC Case No. 3846 of 2009)*

**JUDGMENT**

I. Background

1. The Original Accused and now Appellant in this Appeal was charged in the Subordinate Court with the offence of **Defilement Contrary to Section 3(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006. Particulars of Offence** On the 21st day of June 2009 in Lugari District within Western Province unlawfully and intentionally caused penetration with his genital Organ ... of a child namely R.M.M aged 14 years old.

2. An alternative charge was also preferred being **Indecent Act Contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006.**

**Particulars of Offence**

On the 21st day of June 2009 in Lugari District within Western province unlawfully and intentionally indecently assaulted a child (a girl) namely R.M.M aged 14 years by touching her ...

3. The Appellant appeared before the Trial Magistrate (SRM) on the 24<sup>th</sup> June 2009. The Interpretation in Court was English/Kiswahili. The Charge was read on count one and the Appellant pleaded guilty. The Alternative Count was therefore not considered on this plea on Count No.1.
4. A Plea of guilty being entered, the facts were narrated to the Appellant of how on 21st June 2009 he gave a lift to the minor, a student at a Primary School in Standard 6. The Appellant diverted his bike into a forest where he forced the minor to undress and defiled her. It was her screams that attracted members of public who apprehended the Appellant. Medical evidence indicated the minor was defiled. Although she was found to be HIV negative, she had Sexually Transmitted Disease (STD) found on her.
5. The Appellant in reply to the facts read to him in details stated “ It is true, I slept with her”. In mitigation he stated he was alone with his siblings” The Trial Magistrate gave a Sentence being a deterrent Sentence and sentenced the Appellant to 30 years imprisonment on the 24<sup>th</sup> June 2009.
6. Being aggrieved with both the Conviction and Sentence the Appellant filed an Appeal to this High Court on the 8<sup>th</sup> July 2009 through his Advocate. This Appeal was admitted for hearing (Mwilu J) on the 9<sup>th</sup> march 2010.

## II. Appeal Procedure

7. On the day called out, the Advocate for Appellant was absent. The said Advocate was on strike.
8. The Court proceeded with this Appeal as permitted by law under Section 354 of the Criminal Procedure Code where it is not necessary for the parties, the Advocate and or Appellant to attend Court.

## III. Appeal

9. The Petition of Appeal being

- (a) The trial Magistrate erred in law and fact in failing to ascertain the language understood by the Appellant,**
- (b) In failing to inquire into the abuse of the Appellant's Constitutional rights that made the entire proceedings null and void,**
- (c) ... in meting out a sentence that was excessive in the circumstances,**
- (d) ... the medical evidence ... was inconclusive and required corroboration,**
- (e) ...Failing to warn the Appellant on the consequences of pleading guilty to the charge,**
- (f) ... disregarded procedure as to conviction, mitigation and sentence.**

10. In reply to this Petition the Advocate for the Republic argued that the language used was clearly indicated English/Kiswahili translation. The Appellant participated to the proceedings and made admission of "**it is true**" and further stated

**"I slept with her"** This in itself indicated that he understood the language. Case law

**Paul Nakua Eyan**

=vrs=

**Republic**

**Cr.A. 241/2006**

**(Omolo, Githinji, Aluoch JJA)** refers.

11. As to the sentence the term 20 years imprisonment was a minimum sentence met.

## IV. Opinion

12. A plea of guilty had been entered. The Principal found in the case law of **Adan vrs Republic** (1973) E.A 445 was accordingly met in the procedure of taking down evidence on a plea of guilty.
13. Under Section 348 of the Criminal Procedure Code it states that
- " No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate Court, except as to the extent or legality of the sentence".**
14. To this end, the appeal against conviction cannot stand to be heard where a plea of guilty has been entered. The issue of the language does not arise, as from the proceedings, the Court indicated the language used. The response from the Appellant was understood. At the stage of the Plea, Medical Evidence, documentary, was produced to Court.
15. The appeal on conviction is dismissed.
16. As to the Sentence of 30 years imprisonment, the trial Magistrate took into consideration that the victim a minor aged 14 years old was dehumanized and unable to consent to the sexual offences. The aspect of "**deterrence**" was the basis for the sentence of 30 years imprisonment. I do not intend to interfere with sentence as it does not amount to an illegality in any way. The appeal against sentence is also rejected and dismissed.

**DATED THIS 15<sup>TH</sup> DAY OF JULY 2010 ELDORET.**

**M.A ANG'AWA**  
**JUDGE**

17. Right of appeal within 14 days.

Section 379 (3) Criminal Procedure Code.

M.A. ANG'AWA

**JUDGE.**

**Advocate**

- (i) J.K. Chirchi, Senior State Counsel instructed by the office of the Attorney General for the State/Respondent - Present
- (ii) Ms Buluma Advocate instructed by the firm of M/s Buluma and Co. Advocate for the Appellant - Absent - advocates being on strike
- (iii) Godfrey Matsitsi (Appellant in person) - Present