



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Criminal Appeal 102 of 2009

(Appeal originating from BGM CM'S CR. NO.1683 of 2009)

FRED ETYANG ORAMISI ::: APPELLANT

~VRS~

REPUBLIC ::: RESPONDENT

RULING

The Appellant Fred Etyang Oramisi was convicted by Bungoma Resident Magistrate of the offence of defilement of a child contrary to section 8 (2) as read with section 4 of the Sexual Offences Act, Cap 3. He was sentenced to serve 20 years imprisonment. On the second count, the Appellant was convicted of abduction contrary to section 259 of the Penal Code and sentenced to serve seven (7) years. The two sentences were to run concurrently.

In his amended petition of appeal filed by his counsel Messrs Omundi Onchiri, the Appellant relies on three grounds:

- a) *That the plea was equivocal;***
- b) *That the sentence was excessive in the circumstances;***

c) That his mitigation was not considered.

Mr. Ogoti the state counsel conceded to the appeal on the first ground. He submitted that the charge was not read over to the accused. The record does not support an unequivocal plea. The state applied for a retrial.

I have looked at the record of appeal. The plea appears to have been taken on 28/07/2009 before Mr. Kyambia, Resident Magistrate. The records indicate the Coram of the court, then:

***“Interpretation English/Kiswahili
Accused: Present
Count 1 - It is true. Plea of guilty entered
Count 11 - It is true. Plea of guilty entered.”***

The facts were then read to the Appellant and he admitted them. The language used to read and explain the charge is not indicated. It is not clear whether it was English or Kiswahili. This contravenes the provisions of sections 77 (2) (b) of the Constitution and section 198 of the Criminal Procedure Code. The law requires that the charge is read in a language that the accused understands for a plea to be unequivocal. The court must indicate on the record the language used and whether it was understood by the accused. The failure to comply with the law renders the proceedings null and void.

The record of appeal (pg 4) does not show that the charge was ever read to the Appellant.

The court hereby sets aside the conviction and sentence. The trial took one day and this appeal has taken only seven (7) months to be heard. This is a short period and a retrial order will not cause any prejudice to the Appellant.

I order that a retrial be held within seven (7) days before another magistrate.

F. N. MUCHEMI

JUDGE

Ruling delivered and dated this ...23rd day of ...September..... 2010 in the presence of the appellant and the State Counsel Mrs leting.

**F. N. MUCHEMI
JUDGE**

