



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 61 of 2007

FEISAL ALI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the conviction and sentence of the Chief Magistrate's Court Mombasa in Criminal Case No. 656 of 2007)

JUDGMENT

The Appellant was charged before the Chief Magistrate with nine counts of molestation contrary to Section 238(2) of the Penal Code. It was alleged he had sent unprintable obscenities through SMS to the complainant. Upon his plea of guilty he was convicted and sentenced to two years imprisonment on each count. The sentences were ordered to run concurrently. He has appealed against that conviction and sentence and listed four grounds of appeal.

Mr. Mabeya who appeared for the Appellant argued the grounds of appeal together and raised two points. The first one is that the charge was defective and the second one was that there is nothing on record to show that the charges were read over and explained to the Appellant before he was asked to plead.

Mr. Onserio for the state conceded that the particulars of the charge supported the offence of intimidation and not molestation. But as regards the plea he said the same was proper as the charges were read to the Appellant in Kiswahili language. He asked for a retrial.

I have perused the record and I agree with Mr. Mabeya that the particulars of the charges do not support the offence of molestation and that there is nothing on record to show that the charges were read over and explained to the Appellant before he was asked to plead. As there was interpretation from English to Kiswahili I am inclined to think that the charges were read over and explained to the Appellant before he pleaded but we cannot assume. In the circumstances I allow this appeal quash the conviction and set aside the sentence.

Given the seriousness of the offences I think the ends of justice will be served by ordering a retrial. I therefore direct that the State Counsel do draft proper charges and have the Appellant tried before another magistrate. The Appellant shall be in remand custody until 30th May 2007 when he should be taken before any other magistrate than the Chief Magistrate for plea.

DATED and delivered this 29th day of May 2007.

D.K. MARAGA

JUDGE

29.5.2007

Before Maraga Judge

Mr. Mabeya for Appellant

Mr. Onserio for the state

Court clerk – Mitoto

Court – Judgment delivered in court.

D.K. MARAGA

JUDGE