

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO 729 OF 2002

FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO 2646 OF 2002 OF THE SP MAGISTRATE'S COURT AT
KIBERA

KEFFAH PASUT MATOKE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was convicted of the offence of indecent assault on a female c/s 144(1) (and not section 114(B) of The Penal code and sentenced to five years imprisonment with hard labour and to receive 8 strokes of the cane. The record shows that this was count two of the charge wherein the first count was defilement of a girl c/s 145(1) of The penal code. The appellant allegedly pleaded guilty to the said count two.

Aggrieved by the said conviction, he appealed. The learned counsel for the appellant has taken the court through the record pointing out several discrepancies and submitted that this appeal should succeed.

On the other hand, the learned counsel for the Republic, while conceding the plea was not an unequivocal admission of guilt, submitted that, that alone could not absolve the appellant from the offence charged.

I have gone through the record. First, the offence upon which the appellant was convicted should have been an alternative charge to the main charge, not a separate count. Secondly the section cited should have been 144(1) but that alone did not occasion a miscarriage of justice.

The offences were serious in nature and it would appear the appellant had the inclination to admit the same. I however, with respect, agree that the plea was not an unequivocal admission of the offence.

The appellant has served only four months of the sentence imposed. An order for a retrial will not occasion a miscarriage of justice.

Accordingly, the appeal is allowed, conviction quashed and sentence set aside. The appellant shall appear before another magistrate of competent jurisdiction in Nairobi on 7th October, 2002 for a retrial.

Orders accordingly.

Dated and delivered at Nairobi this 1st day of October, 2002

MBOGHOLI MSAGHA

JUDGE