



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**CRIMINAL APPEAL NO. 23 OF 2017**

*(Being an Appeal from Original Conviction and Sentence in Criminal Case No. S. O. 43 of 2015 of the Chief Magistrate's Court at Naivasha before E. Kimilu – Ag. PM)*

**DAVID MBOGO THUO.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....PROSECUTOR**

**J U D G M E N T**

1. **David Mbogo Thuo**, the Appellant herein was charged with Rape Contrary to Section 3 (1) as read with Section 3 (3) of the Sexual Offences Act. In that on the night of 30<sup>th</sup> July 2015 in Gilgil Sub-County of Nakuru County, he intentionally and unlawfully caused penetration of his male genital organ namely penis into the anus of **S.W.** without his consent.
2. He pleaded guilty to the charges on 3<sup>rd</sup> August 2015, when arraigned before the court. He was sentenced to ten years imprisonment.
3. The Appellant's appeal to this court is based on two grounds, which are similar and challenge the plea taking procedure. His brief submissions assert that the Appellant did not fully understand the charges facing him.
4. The DPP citing Section 348 of the Criminal Procedure Code opposed the appeal. Miss Amboko submitted that the guilty plea was unequivocal and that the Appellant fully understood the charges facing him. She cited the case of **Adan -Vs- Republic [1973] EA 445**.
5. This court having reviewed the plea taking proceedings agrees with the DPP. In **Adan -Vs- Republic [1973] EA 445** the procedure for plea taking was set out as follows:-

**“(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;**

**(ii) the accused's own words should be recorded and if they are in admission, a plea of guilty should be recorded;**

**(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;**

**(iv) if the accused does not agree the facts or raises any question of his guilty his reply must be recorded and change of plea entered;**

**(v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded.”**

6. The record of the lower court proceedings show that on 3<sup>rd</sup> August 2015, the charges were read to the Appellant and translated into Kiswahili and the Appellant stated in response:

**“True”**

When the matter was adjourned for facts on 5<sup>th</sup> August, 2015 the facts of the case were read out in detail, to which Appellant replied:-

**“Facts are true. We had agreed. I am guilty as charged.”**

Thereafter he made a mitigation address before sentence.

7. The record does not support the Appellant’s present complaints. He clearly understood the charges read to him and pleaded guilty. The plea was unequivocal and there is no merit in the present complaint. The appeal is accordingly dismissed.

**Delivered and signed at Naivasha, this 3<sup>rd</sup> day of May, 2018.**

In the presence of:-

Mr. Koima for the DPP

Appellant – present

C/C – Japheth and Kamau

**C. MEOLI**

**JUDGE**