

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL REVISION NO. 320 OF 2018

REPUBLIC.....APPLICANT

VERSUS

COLLINS KIPLAGAT KOECH.....RESPONDENT

RULING

1. This matter was placed before me for revision under Sec. 364 and 365 of the CPC. The basis of which is to confirm the correctness and propriety of the trial magistrate finding especially conviction and sentence where the convicted individual was sentenced to serve a term of 20 years imprisonment for the offence of defilement. By a letter dated 8th June 2018, J. K. Kiplagat Advocate has on behalf of the convict urged this court to find that the convict was not given a chance to seek legal representation and put in his defence (I am not sure exactly what that implies).

2. The accused (now convict) pleaded guilty to the offence, and from the trial court's records show that the charge was read over to the accused in Kiswahili – there is no suggestion even in this application for revision that he did not understand Kiswahili. His response was an admission.

3. The facts were then narrated to him and he confirmed them as being correct – at no stage did he indicate that he wished to have legal representation or that some undisclosed source had advised him to plead guilty.

4. Art. 50 (2) (g) provides that;

“Every accused person has the right to a fair trial which includes the right to choose and be represented by an advocate, and be informed of that right promptly.

5. Whereas the applicant raises serious and fundamental Constitutional issues, I do not think this can be addressed by way or revision which under Section 363(1) requires the court to satisfy itself as to the legality correctness, propriety of any sentence, or order reviewed or passed. In my view this is an issue that requires great input by the applicant as well as the Director of Public Prosecution, and not a sweeping statement made regarding right to be informed of his option to engage counsel.

6. The matter would be best addressed either on appeal or by a Constitutional petition where both parties can exhaustively submit on the same.

7. I decline to order any revision.

DELIVERED and DATED this 5th day of July at **ELDORET**.

H. A. OMONDI

JUDGE