

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL 9 OF 2018

RICHARD MWITA MUHONI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. D.K Matutu – SRM dated 25th January, 2018 at the Senior Principal Magistrate’s Court at Kilgoris in Criminal Case No. 4 of 2018)

JUDGMENT

1. The accused, RICHARD MWITA MUHONI was charged with the offence of defilement contrary to section 8(1) and (3) of the Sexual offences Act. It was alleged that on 21st January 2018 at around 22.00 hours within Narok County, he intentionally caused his penis to penetrate the vagina of CNM, a child aged 17 years. He was also charged with an alternative count of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act based on the same facts.
2. The appellant pleaded guilty to the alternative charge and was sentenced to 10 years imprisonment. He now appeals against conviction and sentence on the ground that the plea was equivocal and could not justify conviction.
3. Mr. Omwega pointed out that when the facts were read, the age of the complainant which is an essential ingredient of the offence was not read to him. Mr. Otieno conceded the appeal on that basis.
4. I agree that the age is an essential ingredient of the offence and it ought to have been included in the facts of the case read to the appellant. Failure to do so prejudiced the appellant as it is a fact he could have disputed given the age of the complainant or even proffered a defence under section 11(2) of the Sexual Offences Act.
5. In the circumstances, I agree that the guilty plea cannot stand. I therefore, allow the appeal, quash the conviction and sentence.

The appellant is set free unless otherwise unlawfully held.

Dated and delivered at Kisii this 5th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Omwega, Advocate for the Accused.