



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 149 OF 2012

P M L APPELLANT

VERSUS

REPUBLIC RESPONDENT

(An Appeal from the Judgment of the Principal Magistrate Honourable B. Mosiria in Kapsabet Criminal Case No. 1854 of 2012, dated 13th August, 2012)

JUDGMENT

1. The appellant *P M L* was charged with the offence of defilement contrary to *Section 8(1)* as read with *Section 8(2)* of the *Sexual Offences Act*. The particulars thereof allege that between 8th and 9th August 2012 at Lessos Trading Centre in Nandi County, the appellant intentionally caused his penis to penetrate the anus of *A.K.S* (Name withheld) a child aged ten years.

2. The record of the lower court shows that initially, the appellant denied the charge when it was first read to him on 10th August 2012. But he changed his mind shortly thereafter when the complainant testified on the same day after the prosecution requested that his evidence be taken on a priority basis.

3. After a brief *voire dire* examination, the complainant, a child aged 10 years gave evidence on oath and was cross examined by the appellant. Immediately after cross examining the complainant, the appellant addressed the court as follows;

“ I do pray for court to forgive me for offence I committed”.

4. This apparent admission of the offence prompted the trial court to read and explain the charges to the appellant once again. In response, the appellant admitted the charge as true. The prosecution narrated the facts supporting the charge on 13th August 2012 and the appellant responded by saying that the facts were true. He was consequently convicted on his own plea of guilty. He was sentenced to life imprisonment.

5. The appellant was aggrieved by his conviction and sentence. He appealed to this court vide a petition of appeal filed on 30th August, 2012. On 9th February, 2017, he sought and was granted leave to file amended grounds of appeal under *Section 350* of the *Criminal Procedure Code*.

6. In his handwritten amended grounds of appeal filed on 9th February, 2017, the appellant listed seven grievances the key ones being that his plea of guilty was equivocal as at the time he pleaded guilty, he did not understand the charges as he was mentally and physically unwell; that hearing of the case commenced on the same day he took plea and the trial court did not give him ample time to prepare his defence.

7. At the hearing, the appellant prosecuted his appeal in person. He relied on home made written submissions which he presented to the court. In his submissions, he emphasized that he was wrongly convicted as his plea of guilty was involuntary and equivocal since at the time, his mental health was impaired; that this fact was evidenced by the findings made in the P3 form filled on his behalf. He also contended that he was denied an opportunity for a fair trial as he was not supplied with the evidence the prosecution intended to rely on and he was not granted an opportunity to prepare his defence. He urged the court to order a retrial.

8. The appeal is contested by the state. Learned prosecuting counsel *Ms. Oduor* urged the court to find that the appellant's plea of guilty was unequivocal and that he was properly convicted. She urged the court to dismiss the appeal for lack of merit.

9. I have carefully considered the grounds of appeal, the submissions made by the appellant and the state and the record of the lower court. For a plea of guilty to be unequivocal, it must be recorded in strict compliance with the procedure enumerated under *Section 207* of the *Criminal Procedure Code*. This procedure has been re-iterated and adopted in a good number of authorities by both the High Court and the Court of Appeal. See for example *Adan V Republic (1973) EA 445*; *Sigmond Pastory Ruwa V Republic High Court Criminal Appeal (Eldoret) No.127 of 2014 (UR)* and *Kariuki V Republic (1984) KLR 809*.

10. The aforesaid procedure is 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 that he understands;
- ii. The accused's own words should be recorded and if they are an 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 with the facts or raises any questions of his guilt, 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.

11. A reading of the proceedings of the lower court reveals that the charges were read and explained to the appellant in the Kiswahili language which he understood. He admitted the charge as true as well as the facts of the case which were read out to him about three days later on 13th August, 2017. The record clearly shows that the learned trial magistrate strictly followed all the steps of recording an unequivocal plea of guilty as required by *Section 207* of the *Criminal Procedure Code (CPC)*.

12. The claim that the appellant did not understand the charge preferred against him or the facts supporting the offence before pleading to them is unsustainable for two main reasons;

First, the appellant did not complain to the trial court that he was unwell before he took his plea and secondly, the manner in which he cross examined the complainant after he gave his evidence on the same day leaves no doubt that the appellant's mental faculties were alert and functional. The questions he put to the complainant shows that he fully understood the complainant's evidence. He would not have followed the complainant's evidence if he was indisposed as alleged. Besides, there is no evidence in the P3 form filled in respect of the complainant to suggest that he was unfit to plead. In the circumstances, I am satisfied that the plea of guilty in this case was unequivocal.

13. As regards the complaint that the appellant was not given the prosecution's evidence in advance to allow him to prepare his defence or time to prepare his defence given that hearing commenced on plea

day, it is important to note that only the complainant gave evidence on that day. The case was not supposed to proceed for hearing on any other day given that the appellant pleaded guilty to the offence on the same day. There was therefore no need for the prosecution to supply him with its evidence or for the court to give him time to prepare his defence as he had no defence to offer given that he had already admitted having committed the offence. Nothing therefore turns on that ground of appeal.

14. For the foregoing reasons, it is my finding that the appellant was properly convicted. In the premises, I find that the appeal is devoid of merit and it is hereby dismissed.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 10th day of May, 2017

In the presence of:

Appellant

Miss Kigegi for the state

Mr. Lobolia court clerk