



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 106 OF 2014

(FORMERLY HCCRA NO. 55 OF 2012)

BETWEEN

JARED OKOTH AKUNO APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case (SOA) No. 1 of 2012 at Senior Principal Magistrates Court at Oyugis, Hon.C. Yalwala, SRM dated on 28th February 2012)

JUDGMENT

1. In the subordinate court, the appellant was charged with the offence of defilement contrary to **section 8(1) and (3)** of the ***Sexual Offences Act, 2006***. The particulars were that on 24th February 2012 at [particulars withheld] in Rachuonyo District within Homa Bay County, he intentionally caused his penis to penetrate the vagina of M A, a child aged 13 years. He also faced an alternative charge 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 was convicted on his own plea of guilty and sentenced to 20 years imprisonment. He now appeals to this court against the conviction on the following grounds set out in the petition of appeal filed on 9th March 2012. He contends that he was convicted on his own plea of guilty without knowing the consequences of his plea and that he was not informed of the nature of the offence he was facing and that he was misadvised by the police and the complainant's family to admit liability. He urged the court to set aside the conviction and sentence in his written submissions.
3. In opposing the appeal and supporting the conviction, Mr Oluoch, learned counsel for the State, submitted that the charge and elements thereof were read to the appellant and the conviction entered by the court was free from error.
4. The procedural requirements of recording a guilty plea under **section 207** of the ***Criminal Procedure Code (Chapter 75 Laws of Kenya)*** were elucidated in ***Adan v Republic [1973] E.A. 445*** as follows:-
 - i. The charge and all the essential ingredients of the offence should be read 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 an admission, a plea of guilty should be recorded.
 - iii. The prosecution should immediately state the facts and the accused should be given an opportunity to dispute or explain the fact or add any relevant facts.
 - iv. If the accused does not agree with the facts or raises any question as to his guilt, his reply must be recorded and a change of plea entered.
 - v. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.
5. According to the proceedings when the principal charge was read to the appellant he stated, "*It is not true.*" In answer the alternative count, he stated, "*It is true but it was 24/2/2012.*" Thereafter a plea of not guilty was entered on the principal count. The prosecutor then applied to amend the charge sheet on both counts that the date on which the offence was committed read "*24/02/2012*" rather than "*25/02/2012.*" After the charge was amended, it was read over to the accused who replied on the main charge, "*It is true.*"
6. The facts were read over to the appellant. The prosecutor also summarized the findings recorded in the medical report dated 27th February 2012 prepared by Dr Ogola who examined the complainant. After the facts were read to appellant, he responded, "*It is true that we had sexual intercourse on that day as read in the facts.*" The appellant was convicted on his own plea of guilty and in mitigation he stated that, "*I am a first offender. I swear and promise that I shall not repeat the offence.*"
7. The appellant, in his written submissions, complains charge was amended without him being informed of the amendment. The record is clear that the charge was amended after the appellant stated the correct date. **Section 214 of Criminal Procedure Code (Chapter 75 of the Laws of Kenya)** permits the court to amend the charge at any stage of the proceedings before the close of the prosecution case provided the amended charge was read over to the accused to plead. The learned magistrate complied with the law and the amended charge read over to the appellant and he pleaded guilty.
8. The facts laid out by the prosecution established the main count of defilement and I am satisfied that the appellant's plea of guilty was unequivocal. I affirm the conviction.
9. The doctor assessed the complainant's age to be between 12 and 13 years. In the event of a conviction for the defilement of a child aged between age 12 and 15 years, **section 8(3) of the Sexual Offence Act, 2006** provides for a mandatory sentence of 20 years. The sentence was lawful. It is affirmed.
10. The appeal is dismissed.

DATED and DELIVERED at HOMA BAY this 9th day of July 2015

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecution instructed by the Office of the Director of Public Prosecutions for the respondent.