



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC. APPLICATION CASE NO. 78 OF 2013

JIMMY MUTUKU MUSOMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application dated 27/5/2013 seeks the following orders:-
 1. **“That this Honourable Court do call for the lower court record and review the orders made by the Hon. D.G Karani P.M. on 13/5/2013 in Kithimani Principal Magistrate’s S.O.A Case No. 7 of 2013.**
 2. **That this Honourable Court do make a finding that the record of the lower court is irregular and wanting and that the plea taken by the Applicant is equivocal.**
 3. **That this Honourable Court do make a finding that the conviction and sentence of the lower court is illegal and the conviction be quashed and the sentence set aside.**
 4. **That the lower court be directed to take again the plea of the Applicant and the charge be translated to the Applicant in the KIKAMBA language which is understood by the Applicant.**
 5. **That this Honourable Court do make any other or further orders it deems fit and necessary for the ends of justice to be met.**
 6. **That the costs of this application be in the cause.”**
2. According to the application in support sworn by **Andrew Nduva Kitonga** the counsel for the Applicant, the Applicant was charged with the offence of defilement contrary to the **Sexual Offences Act**. The Applicant was convicted on his own plea of guilty and sentenced to serve twenty years imprisonment. It is stated that the trial was conducted in a language that the Applicant did not understand.
 3. I have perused the lower court record. The plea was taken on 13/5/2013 before **Hon. D.G. Karani P.M.** The record reflects **English/Kikamba** interpretation. The record indicates that the Applicant understood the language. The Applicant pleaded to the charges. The facts were read out to him and he stated that the same were correct. The Applicant also gave his mitigation to the court. The court record reflects that there was a court clerk in court throughout the proceedings. As stated by the Court of Appeal in **Said Hassan Nuno v Republic (2010) eKLR:-**

“We take judicial notice that one of the core duties of a court clerk is to offer interpretation services to accused or even to the court where it does not understand the language of the

accused; or a witness to the case.”

4. The Applicant was convicted under **section 8 (1)** of the **Sexual Offences Act** which provides for a sentence of not less than 20 years. The sentence is within the law.
5. The application has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at **Machakos** this **18th** day of **March** 2015.

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B. THURANIRA JADEN

JUDGE