



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPEAL NO. 54 OF 2010

REPUBLIC APPLICANT

VERSUS

DAVID KATUI RESPONDENT

(Being an appeal from the conviction and sentence of Hon. E. Juma Osoro (srm) delivered on 8/03/2010 in Kitui Principal Magistrate's Court Sexual Offence Case No. 7 of 2010)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **David Katui** was charged with the offence of “defilement contrary to **section 8 (1) (2)** of the **Sexual Offences Act No. 3 of 2006**”.

The particulars of the offence were that “on the 4th day of December 2009, in **Kitui District** of the **Eastern Province**, defiled **CK** a child aged 9 years.”

2. In the alternative the Appellant was charged with the offence of “indecent act with a child contrary to **section (11) (1)** of the **Sexual Offences Act No. 3 of 2006**”.

The particulars of the offence were that “on the 4th day of December 2009 at about 5.00 p.m. in **Kitui West District** of the **Eastern Province**, committed an act of indecency with **CK** a child of 9 years by touching her private parts namely vagina”.

3. When the Appellant was arraigned in court on 8/3/2010, he pleaded guilty. The Appellant was convicted and sentenced to life imprisonment.

4. The Appellant was dissatisfied with both the conviction and the sentence and appealed to this court on the following grounds:-

- **That the charge sheet was defective.**
- **That the conviction and sentence were not supported by the evidence.**
- **That the consequences of pleading guilty were not explained to the Appellant.**

5. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the case of **Adan Vs Republic (1973) EA 445** where the Court held:-

- i. **The charge and all the essential ingredients of the offence should be explained 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 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 question 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 facts relevant to sentence together with the accused’s reply should be recorded.”**

6. The charge was read out the Appellant and he pleaded guilty. The court record reflects that there was **English/Kikamba** interpretation.

7. The facts that were read out to the court show that the complainant was a nine (9) year old standard two pupil who was sent to deliver firewood to the Appellant’s hotel on the material day at about 5.00 p.m. That the Appellant undressed the complainant and removed his trousers and underwear and defiled the complainant. That the complainant thereafter walked home with difficulty and informed her mother what had befallen her. That the complainant was taken to hospital and examined and a P3 form filled in. The P3 form which was produced as an exhibit shows that the complainant was nine years old and that her hymen was broken.

8. After the facts were read out and recorded by the court, the Appellant stated that the same were correct. The court then proceeded to convict the Appellant. The facts recorded by the trial court clearly reflect that the complainant was defiled. The age of the complainant and the broken hymen are reflected in the facts. The facts supported the charge of defilement. There are not defects in the charge sheet. The trial court duly complied with all the procedures for plea taking. However, I correct the lower court record to reflect that the conviction is on the main count of defilement.

9. Although it is prudent to inform an accused person of the consequences of pleading guilty, in law there is no such requirement. Ignorance of the law is no defence.

10. The sentence meted out is within the law. The appeal has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Kitui this 13th day of November 2014.

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B. THURANIRA JADEN

JUDGE