



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. 27 OF 2013

DENNIS RONO KIBET.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal arising from the judgment of Hon. J. Kasam Ag. SRM in Senior Principal Magistrate's Court at Sotik Criminal Case No.34 of 2012 on the 18th day of June 2013)

JUDGMENT

DENNIS RONO KIBET, the Appellant herein, pleaded guilty to a charge of defilement contrary to **Section 8(1) (2) of the Sexual Offences Act no. 3 of 2006**. He was thereafter convicted and sentenced to serve 20 years imprisonment. The appellant felt aggrieved hence this appeal.

On appeal, the appellant put forward the following grounds in his Petition of Appeal

1. **The learned trial Magistrate erred both in law and in facts in convicting the appellant when the plea taken from him was not unequivocal**
2. **The trial Magistrate erred both in law and in fact in convicting the appellant without confirmation the complainant was really a minor.**
3. **The charge was incompetent and incurably defective**
4. **The case could not be proved beyond any reasonable doubt.**

When the appeal came up for hearing, Mr. Mutai learned Senior Principal Prosecution counsel conceded the appeal on the basis that the charge was incurably defective since it was not clear which section or subsection of the Act the appellant offended. Mr. Mutai further pointed out that the birth certificate used to establish the age of the complainant may have been procured to make the complainants' case strong. I have already enumerated the grounds the appellant relied in support of the appeal. I have considered the oral submissions of learned counsels from both sides. I have also considered the grounds expressed in the Petition of Appeal. The particulars of the offence as stated on the charge are that on the 11th day of August 2012 at [Particulars Withheld] in Bureti District within Kericho County, the accused intentionally caused his penis to penetrate the vagina of J.C, a child aged 15 years. It is the argument of both learned counsels that the charge was incurably defective, hence the plea was equivocal. I have carefully looked at the charge sheet and it is clear on the face of it that the appellant was accused of

defilement contrary to **Section S.8(1) (2)** of the **Sexual Offences Act No.3 of 2006**. With great respect, the section and subsection do not exist. Perhaps the prosecution meant to charge the appellant for committing an offence under S.8(1) or S.8(2) of the Sexual Offences Act. Unfortunately it is not the business of this court to speculate what the framers of the charge intended. This court is guided by the expressions contained in the recorded proceedings.

It is presumed that persons appearing in court are supposed to know the law so that the appellant was expected to object to the charge as being defective. Unfortunately, the appellant was unrepresented when he appeared before the trial court for plea. Care must be taken when taking a plea of guilty so that the charge and its particulars should be clearly framed to enable the accused persons understand what they are charged for and the likely punishment the court will met out. In the absence of clarity in the charge and its particulars, a failure of justice may occur like it happened in this case. With respect, I agree with learned counsels that the charge was so defective that it could not be curable under **Section 382** of the **Criminal Procedure Code**. In the circumstances I find the plea to be equivocal hence a conviction cannot be sustained. I think the above reason is sufficient to allow the appeal without considering the other grounds of appeal. I allow the appeal by quashing the order of conviction and by setting aside the order of sentence. The appellant namely: Denis Rono Kibet is hereby set free forthwith unless lawfully held.

Dated, Signed and delivered in open court this 4th day of October, 2013.

J.K.SERGON

JUDGE

In open court in the presence of

Mrs. Bett holding brief for Mr. Ngetich for the Appellant

Miss. Muthee for the State

Mr. Koech- court clerk