



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 4 OF 2013**

**HAMISI KOMBO MDOE ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From original Conviction and Sentence in Criminal Case No. 2 of 2013 of the Chief Magistrate's Court at Mombasa – Hon. Odenyo - SPM)**

**JUDGMENT**

The Appellant was Convicted and Sentenced to ten (10) years imprisonment contrary to section 8(1) as read with section 8(3) of the Sexual offences Act No. 3 of 2006.

The appellant pleaded guilty to the charge and was Convicted and Sentenced on his own plea.

A perusal of the records show that the interpretation was English/Swahili.

It is not clear whether the plea was taken in English language or in Kiswahili. It is also not indicated which language the Accused understood and whether the facts were read to him in Kiswahili or English language.

These are rights enshrined in article 49 and 50 of the Constitution which relate to a fair trial.

The offence of defilement is a very serious one and carries severe punitive Sentence and there is need to adhere to rules on taking of pleas.

Counsel for the state Mr. Tanui concedes to the appeal but prays for a retrial. I am in agreement with the state that this is a good case for retrial. The Accused/Appellant is hereby discharged and it is ordered that he be tried by a Court of competent jurisdiction.

The case to be mentioned before the Chief Magistrate for plea taking within seven (7) days from today.

**Judgment delivered dated and signed this 2nd day of October, 2013.**

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**M. MUYA**

**JUDGE**

**2ND OCTOBER, 2013**

**In the presence of:-**

**Learned state counsel Mr. Tanui**

**Learned Counsel (absent)**

**Court clerk Mr. Musundi**