



FREDRICK MUSYOKA NYANGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**ORDER ON REVISION**

*(Revision of the decision of J. Nthuku, Resident Magistrate, Nakuru in Criminal Case No. 63 of 2012 dated 12<sup>th</sup> March, 2012)*

Fredrick Musyoka Nyange was charged with the offence of defilement contrary to **Section 8(1)** as read with **Section 8(4)** of the **Sexual Offences Act No. 3 of 2006**. The particulars of the charge are that on diverse dates between 29/2/2012 and 9/3/2012 in Njoro District, within the Rift Valley Province, unlawfully and intentionally committed an act by inserting a male genital organ (penis) into a female genital organ (vagina) of L.K.K, a child aged 17 years. In the alternative, he was charged with the offence of indecent act with a child contrary to **Section 11(1)** of the **Sexual Offences Act**, in that between 29/2/2012 and 9/3/2012 in Njoro District, within Rift Valley Province, unlawfully committed an indecent act to a child namely L.K.K by touching her private parts.

When the applicant appeared before the Hon. J. Nthuku, Resident Magistrate, Nakuru, the applicant pleaded guilty, the facts were read to him, and he was convicted and sentenced to 15 years imprisonment.

This file has been placed before me for revision under Section 364 of the Criminal Procedure Code. I have perused the proceedings before the trial court. After the facts were read to the applicant he was not invited to verify and confirm whether or not the facts were correct. Before a plea of guilty can be entered, the court has to be satisfied that the plea is unequivocal and that can only be established after the facts are read to an accused person. If he confirms that the facts are correct and if they disclose an offence as charged, then a plea of guilty is entered and a conviction follows. If the accused denies the facts, a plea of not guilty is entered and the matter is set down for hearing. Without inviting the applicant to confirm whether or not the facts were correct, it was premature for the court to find the applicant guilty and convict him. In the case of **Adan Vs Republic [1973] EA LR 445**, the court set out the steps to be followed by a court when taking plea. It was adopted in **Kariuki Vs Republic[1954] KLR 809** where it was held:-

**“2. The manner in which a plea of guilty should be recorded is:**

**(a) the trial magistrate or judge should read and explain to the accused the charge and all the ingredients in the accused’s language or in a language he understands;**

**(b) he should then record the accused’s own words and if they are an admission, a plea of guilty should be recorded;**

**(c) the prosecution may 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;**

**(d if the accused does not agree to the facts or raises any question of his guilt his reply must be recorded and a change of plea entered but if there is no change of plea, a conviction should be recorded together with a statement of the facts relevant to sentence and the accused’s reply – Adan v Republic [1973] EA 445”.**

It is evident that the court did not complete the process of taking the plea and this was prejudicial to the applicant. For that reason alone and even without considering the other grounds, the conviction and the

sentence that followed was illegal. Having pleaded guilty, the applicant cannot be availed a right of appeal and for that reason, I will revise the order of the Lower Court, quash the conviction, set aside the sentence and direct that the applicant be produced before the Chief Magistrate's Court for taking plea afresh on 9/7/2012. The said plea be taken before any other magistrate other than Ms Nthuku, Resident Magistrate.

**DATED and DELIVERED this 3<sup>rd</sup> day of July, 2012.**

**R.P.V. WENDOH**  
**JUDGE**