

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
CRIMINAL APPEAL NO. 1469 OF 1998

(From Original Conviction(s) and Sentence(s) in Criminal Case No 738 of
1998 of the Resident Magistrate's Court at GATUNDU.)

DANIEL GITAU MUCHAU.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant allegedly pleaded guilty to the offence of defilement of a girl under the age of 14 years 145(1) of the Penal Code. on conviction he was sentenced to 7 years imprisonment with three light stokes of the cane and subjected to hard labour. He appealed.

The learned counsel for the Republic concedes the appeal but asks for a retrial and with respect. I agree.

The plea was not an unequivocal admission of guilt. The learned trial magistrate did not comply with section 207(2) of the Criminal Procedure Code.

The offence which the appellant faced was serious. he was sentenced on 27/11/98 and therefore has served only about one month of the sentence.

Accordingly, this appeal is allowed, conviction quashed and sentence set aside. The appellant shall be presented before another magistrate of competent jurisdiction for retrial forthwith.

Order accordingly

Dated and delivered at Nairobi this 21st day of December, 1998.

A.MBOGHOLI MSAGHA
JUDGE