IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KARANJA, MAKHANDIA & J. MOHAMMED, JJ.A)

CRIMINAL APPEAL NO. 158 OF 2019

BETWEEN

POO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an Appeal from the judgment of the High Court of Kenya at Nairobi, (Hon. G. W. Ngenye-Macharia, J) dated 19th May, 2016

in

HIGH COURT CRIMINAL NO. 142 OF 2015)

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JUDGMENT OF THE COURT

Section 348 of the Criminal Procedure Code provides, *inter alia*, that **"No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence."** The import of this provision has substantial bearing on this appeal as we shall see shortly.

POO "the appellant" was charged with the offence of incest contrary to Section 20(1) of the Sexual Offences Act. The particulars of the offence were that on the night of 17th March, 2012, at [Particulars Withheld] slums in Industrial area within Nairobi Area Province intentionally touched the vagina of **LA** with his penis, who was to his knowledge his daughter. In the alternative, he was charged with committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act, in that on the same day and place he intentionally touched the vagina of **LA** with his penis, a child aged 10.

The Appellant was convicted on his own plea of guilty for the main count and was sentenced to life imprisonment. He was aggrieved by both the conviction and sentence and accordingly preferred an appeal to the High Court of Kenya at Nairobi on the grounds that the plea was not unequivocal as the charge omitted the word "*unlawful*" thus not supporting the particulars of the offence; that the learned magistrate did not warn him of the seriousness of the offence and the consequences of pleading guilty, and that the trial court failed to avail him an advocate to represent him contrary to **Article 50(2)(h) of the Constitution**.

In due course the appeal was heard by **G. W. Ngenye-Macharia, J.** and in a Judgment rendered on 19th May, 2016, she found the appeal unmeritorious and dismissed it in its entirety. Undeterred, the appellant is before us on a second and perhaps last appeal. His grounds of appeal are the same ones as those he advanced in the High Court. We do not think that we need to go into the merits of these grounds given the mandatory nature of the provisions of section 348 of the Criminal Procedure Code that we have reproduced at the commencement of this Judgment. The provision expressly bars an accused person who has pleaded guilty and convicted on that plea by a subordinate court except as to the extent and legality of the sentence. In this case the appellant was convicted on his own plea of guilty that was unequivocal by the subordinate court, that is, the Chief Magistrate's Court at Makadara. The sentence imposed after the plea of guilty was not illegal or unlawful.

In the case of **Olel V Republic (1989) KLR 444**, the court held that:-

> **"Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (Cap 75) does not merely limit the right of appeal in such cases but bars it completely."**

Based on the foregoing, it is quite clear to us that the appellant is barred from challenging the conviction and his only recourse would have been to challenge the extent or legality of the sentence imposed by the trial court and confirmed by the High Court. However, and as already stated, the sentence imposed was not illegal or unlawful.

The upshot of the foregoing is that we lack jurisdiction to entertain this appeal. Accordingly, the appeal is struck out.

Dated and delivered at Nairobi this 7th day of August, 2020.

W. KARANJA

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR