



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU &

J. MOHAMMED, J.J.A)

CRIMINAL APPEAL NO. 110 OF 2017

BETWEEN

MESHACK SIMIYU MUKOLWE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Being an Appeal against a Judgment from the High Court of Kenya at Kitale, (E. Obaga, J) dated 5<sup>th</sup> December, 2013*

in

HCCRA. NO. 121 OF 2012)

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JUDGMENT OF THE COURT

[1] **Meshack Simiyu Mukolwe**, the appellant herein, was convicted by the Senior Principal Magistrate at Kitale of the offence of defilement of a child aged 15 years contrary to **Section 8(1)** as read with **Section 8(3)** of the Sexual Offences Act and sentenced to 20 years imprisonment.

[2] He appealed against conviction and sentence at the High Court Kitale. The appeal was heard by **E. Obaga, J.** who subsequently dismissed the appeal in its entirety.

[3] The appellant appealed to this Court from the judgment of the High Court. One of the grounds of appeal states:-

“The judgment of the Superior Court is null and void *ab initio* by virtue of the fact that the case was heard and judgment delivered by a Judge of the Environment and Land Court.”

[4] **Mr. Miyienda**, the appellant’s counsel has filed written submissions and contends, among other things, that, a judge of the Environment and Land Court has no jurisdiction to hear and determine criminal appeals and that the appellant should be set free.

[5] The respondent has also filed written submissions relying on the judgment of the Supreme Court in **Republic V. Karisa Chengo & 2 others – Supreme Court Petition No. 5 of 2015 (Karisa Chengo’s case)**. Counsel conceded that the appeal was determined by a judge of the Environment and Land Court and that the judgment is a nullity. Counsel asked for an order for the re-hearing of appeal by a competent court.

[6] It is conceded, and it is in fact a matter of public record that **E. Obaga** is a Judge of the Environment and Land Court and not a Judge of the High Court which is vested with power to hear Criminal Appeals.

From the decision of the Supreme Court in **Karisa Chengo’s case**, Judges of specialised courts like E. Obaga, J. cannot exercise the jurisdiction reserved for the High Court. The impugned judgment is in effect not a judgment of the High Court and is thus a nullity.

[7] Accordingly, the appeal is allowed. The judgment of E. Obaga, J. is quashed. In the interest of justice, the **High Court Kitale Criminal Appeal No. 121 of 2012** shall be re-heard by a judge of the High Court on priority basis

**Dated and delivered at Eldoret this 17<sup>th</sup> day of January, 2019.**

**E. M. GITHINJI**

.....

**JUDGE OF APPEAL**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

**I certify that this is a true copy of the original**

**DEPUTY REGISTRAR**