



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: GITHINJI, OKWENGU & J. MOHAMMED, J.J.A.)

CRIMINAL APPEAL NO. 47 OF 2017

BETWEEN

EMMANUEL EJORE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the High Court of Kenya

at Bungoma (Mutungi, J.) dated 13th November, 2013

in

H.C.C.R.A. No. 135 of 2012)

JUDGMENT OF THE COURT

[1] This is a second appeal originating from the judgment of the Senior Principal Magistrate's Court at Webuye in which the appellant, **Emmanuel Ejore** was tried and convicted for the offence of defilement contrary to **section 8 (1)** as read with **Section 8 (3)** of the **Sexual Offences Act**. He was sentenced to 20 years imprisonment.

[2] In the first appeal before the High Court, the appellant raised 5 grounds in which he contended that the trial magistrate erred in law and fact in convicting the appellant on the complainant's evidence which was incredible; dwelling on the evidence of the complainant's mother which was dubious; relying on medical evidence which was not conclusive; convicting the appellant on investigations which were below par; and convicting the appellant without due regard to his defence.

[3] The hearing of the first appeal proceeded before Justice J.M. Mutungi who delivered a judgment on 13th November 2013 in which he dismissed the appeal in its entirety. It is within our knowledge that Justice John M. Mutungi was appointed as a Judge of the Environment and Land Court through Kenya Gazette Notice No 14346 of 5th October 2012

[4] In **Republic vs. Karisa Chengo & 2 others [2017] eKLR**; the Supreme Court upheld the decision of this Court that the jurisdiction of a Judge employed as an Environment and Land Court Judge, is limited to the hearing and determination of matters arising out of land and environment, and that such a judge has no jurisdiction to hear criminal appeals. This means that Mutungi J had no jurisdiction to hear the appellant's appeal. The result is that the proceedings before Mutungi J and the consequent judgment were a nullity. For this reason, there is no proper appeal before us as the appeal is anchored on a judgment that does not exist.

[5] We therefore set aside the proceedings and judgment of the High Court, and order that the appellant's first appeal be placed before the High Court for hearing and disposal by a Judge with appropriate jurisdiction.

Those shall be the orders of this Court.

Dated and delivered at Eldoret this 25th day of July, 2019.

E. M. GITHINJI

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JUDGE OF APPEAL

H. M. OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.