



IN THE COURT OF APPEAL

AT ELDORET

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

J. MOHAMMED, J.J.A.)

CRIMINAL APPEAL NO. 102 OF 2015

BETWEEN

PETER EREGAI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Kitale, (E. Obaga, J.) dated the 11th day of November, 2013

in

HCCRA NO. 129 OF 2011)

JUDGMENT OF THE COURT

[1] The appellant **Peter Eregai** was convicted by the Resident Magistrate’s Court at Kapenguria of the offence of rape contrary to **section 3(1)** as read with **section 3(3)** of the **Sexual Offences Act No. 3 of 2006**. He was sentenced to serve 20 years imprisonment.

[2] He appealed to the High Court against the conviction and sentence. The appeal was heard by Obaga J who delivered a judgment on 11th November, 2013 in which he dismissed the appellants appeal against conviction and sentence.

[3] The appellant is aggrieved and has lodged this appeal against both conviction and sentence. When this appeal came for hearing, learned prosecuting counsel Mrs. Brenda Oduor, pointed out that the proceedings in the High Court were a nullity as the appeal was heard by E. Obaga J who was appointed as a judge of the Environment and Land Court and not as a judge of the High Court. Referring to the Supreme Court decision in **Republic vs Karisa Chengo & 2 Others [2017] eKLR (Karisa Chengo)**, where the Supreme Court held in essence that the jurisdiction of the judges appointed to the Environment and Land Court is limited to the matters provided in the Environment and Land Court Act and hence they have no jurisdiction to determine criminal appeals, Mrs. Oduor asked the court to quash the conviction but urged the Court to order a re-trial.

[4] We have perused Gazette Notice No. 14346 of 5th October, 2012 and confirmed that indeed E. Obaga J was appointed as a judge of the Environment and Land Court. In accordance with the judgment of the Supreme Court in the Karisa Chengo case, the learned judge who heard and determined the appeal in the High Court that gave rise to the decision subject of the appeal now before us was not competent to hear the appeal. Thus the proceedings and the judgment of the High Court are a nullity. Although the court was urged to order a retrial, the trial in the subordinate court has not been impugned. What is in issue is the proceedings of the High Court. Therefore the question really is whether the Court should remit the appeal back to the High Court for re-hearing.

[5] The appellant was tried and convicted of raping the complainant having forcefully taken the complainant from her husband. The offence was allegedly committed on 15th May, 2011. The abortive appeal was determined on 11th November, 2013. In the circumstances, it is only fair and just that this matter be remitted back to the High Court for re-hearing of the appeal.

[6] Accordingly, the appeal is allowed, the judgment of the High Court dated 11th November, 2013 is set aside, and the appeal is remitted back to the High Court for re-hearing by a court constituted by a competent Judge of the High Court as provided under section 359 of the

Criminal Procedure Code.

Dated and delivered at Eldoret this 14th day of February, 2018.

E. M. GITHINJI

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JUDGE OF APPEAL

HANNAH 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.