



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU & J. MOHAMMED, JJ.A.)

CRIMINAL APPEAL NO. 85 OF 2015

BETWEEN

WYCLIFFE WANYONYI NYONGESA.....APPELLANT

AND

REPULIC.....RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Kitale, (Obaga, J.) dated 27th November, 2013

HCCRA NO. 132 OF 2011)

JUDGMENT OF THE COURT

[1] This is a second appeal by **Wycliffe Wanyonyi Nyongesa** (*appellant*), against his conviction and sentence for the offence of defilement of a girl contrary to **section 8 (1)** as read with **section 8 (3)** of the **Sexual Offences Act No. 3 of 2006**. The appellant was convicted of the offence by the Senior Resident Magistrate's court at Kitale, and sentenced to serve twenty (20) years imprisonment. His appeal against conviction and sentence was dismissed by the High Court (**E. Obaga, J.**).

[2] The appellant being dissatisfied has lodged this second appeal. In his memorandum of appeal filed in person on 3rd December, 2013, seven (7) grounds of appeal were raised. The appeal was argued before us on 4th December, 2017. However, upon retiring to prepare our judgment, we have noted that the learned judge who heard the first appeal in the High Court is Mr. Justice E. Obaga who was appointed as a judge of the Environment and Land Court vide Gazette Notice No.14346 of 5th October, 2012.

[3] In the case of ***Republic vs Karissa Chengo & 2 Others [2017] eKLR***, the Supreme Court upheld the holding of this Court that a judge of the Environment and Land Court was not appointed as a judge of the High Court and therefore had no jurisdiction to hear and determine a criminal appeal. Therefore, the hearing of the appellant's appeal in the first appellate court by a judge of the Environment and Land Court, rendered the proceedings in the first appellate court a nullity. The result is that there is no proper judgment before us upon which a second appeal can be based.

[4] In the circumstances, we have no alternative but to declare the proceedings in the High Court a nullity and direct that this matter be remitted back to the High Court for the appellant's first appeal to be reheard by a competent judge of the High Court.

Those shall be the orders of this Court.

DATED and delivered at Eldoret this 19th day of April, 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.