IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, MUSINGA & MURGOR, JJ.A.)

CRIMINAL APPEAL NO. 44 OF 2014

BETWEEN

IGNATIOUS KIBIWOT KITUR ……………………….….….. APPELLANT

AND

REPUBLIC ………………………………………..……..... RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Eldoret (Ochieng, J.) dated 14th November, 2013

in

CR. A. NO. 191 OF 2012)

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JUDGMENT OF THE COURT

1. The appellant was convicted on his own plea of guilty to a charge of defilement of a girl aged 5 years. He was sentenced to life imprisonment. The appellant however preferred an appeal to the High Court, saying that the charge was read to him in Kiswahili language,which he did not understand, contending that he only understood Nandi language.
2. The High Court, in a considered judgment, found the appeal unmeritorious and dismissed it. The appellant preferred a second appeal to this Court. This being a second appeal, our jurisdiction is limited to matters of law only.

3. Although the appellant's amended memorandum of appeal consists of several grounds, the only issues raised are that the proceedings were conducted in Kiswahili language which he did not understand, the sentence that was passed against him contravenes the provisions of **Article 59 (2)** of the **Constitution** and that he was not informed of his rights as provided in **Article 50 (2) (g)** and **(h)** of the **Constitution.**

4. **Article 59 (2)** of the **Constitution** is not relevant at all in this appeal.The Article sets out the functions of the Kenya National Human Rights and Equality Commission. The sentence to life imprisonment that was handed down by the trial court is provided for under **Section 8 (2)** of the **Sexual Offences Act.** It is a mandatory sentence for any offender found guilty of defiling a child aged 11 years and under. The sentence is therefore not illegal.

5. As regards the issue of language, the record shows that the charge was read in Kiswahili language.Apart from pleading guilty and admitting the facts as read out, the appellant also mitigated. That in itself shows that he understood the language of the court. The appellant did not tell the trial court that he had any difficult in understanding Kiswahili. That ground of appeal cannot stand and is dismissed.

6. **Article 50 (2) (g)** and **(h)** stipulate some of the ingredients to a fair trial available to every accused person, which include:

“(g) to choose, and be represented by, an advocate, and to be informed of this right promptly;

(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.”

7. There is no evidence on record that the trial court informed the appellant of the aforesaid rights before the plea was taken. The question that now arises is whether the failure by the trial court to inform the appellant of his right to legal representation vitiated his conviction and sentence.We do not think so.The appellant unequivocally pleaded guilty to the charge of defiling a child of tender age and even if he had legal representation and had elaborate mitigation made on his behalf, that would not have varied the mandatory sentence that was passed by the trial court.

8. We find this appeal lacking in merit and dismiss it in its entirety.

DATED and delivered at Eldoret this 14TH day of JUNE, 2016.

D. K. MARAGA

JUDGE OF APPEAL

D. K. MUSINGA

JUDGE OF APPEAL

A.K. MURGOR

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR