



IN THE COURT OF APPEAL

AT ELDORET

CORAM: MARAGA, MUSINGA & MURGOR, JJA.)

CRIMINAL APPEAL NO. 231 OF 2011

BETWEEN

SIMON KIPRUTO SIMATEI APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Eldoret (Azangalala, J.) dated 4th August, 2011

in

H.C.CR. APPEAL NO. 78 OF 2009)

JUDGMENT OF THE COURT

1. On 12th May, 2005 the appellant was convicted on his own plea of guilty on two counts of defilement contrary to **section 8 (1)** as read with **section 8 (2)** of the **Sexual Offences Act**. In the first count, the appellant admitted that on 8th April, 2009 at [Particulars Withheld] Village, Kaptebe Location in Uasin Gishu District he defiled **M. J.**, a girl aged 8 years. In the second count, the appellant admitted that on the aforesaid date and place as in count one he defiled **J. J.**, a girl aged 9 years.
2. The trial court sentenced the appellant to 50 years' imprisonment on each count but the sentences were ordered to run concurrently.
3. Being dissatisfied with the conviction and sentence, the appellant preferred an appeal to the High Court. He contended that the charges were not fully explained to him in the language he understood; that the police had threatened to kill him if he denied the charges; and that the sentence handed down was very harsh.
4. The High Court found that the proceedings before the trial court were conducted in English and translated into Kiswahili. The appellant did not state that he was unable to follow the proceedings, the record showed that he fully participated in the proceedings, the High Court held. Consequently, the appeal against conviction was dismissed. As regards sentence, the High

Court held that the offence of defilement of a girl aged below 11 years carries a life imprisonment and therefore the trial court had no discretion in imposing a sentence of 50 years' imprisonment. The High Court set aside that sentence and substituted the same with imprisonment for life.

5. The appellant has preferred a second appeal to this Court. In his self-drawn memorandum of appeal, the appellant has raised almost the same arguments as he had advanced before the High Court.

Mr. Kipnyekwei, learned counsel for the appellant, submitted that the trial court did not ask the appellant if he understood Kiswahili language before it proceeded to take the plea. Likewise, the High Court proceeded in English/Kiswahili until 24th June, 2010 when a Nandi interpreter was availed, counsel added. He cited several authorities to buttress his submissions. The authorities included **SWAHIBU SIMBAUNI SIMIYU & ANOTHER V REPUBLIC**, [2006] eKLR, **MOSES KARAGU WAMBUGU V REPUBLIC**, [2008] eKLR and **PAUL MUTUNGU V REPUBLIC** [2006] eKLR.

6. **Mr. Omwega**, Assistant Director of Public Prosecutions, opposed the appeal. He submitted that the appellant understood the charges that were read out to him and mitigated before sentence was passed. Mr. Omwega sought to distinguish this Court's decision in **SWAHIBU SIMBAUNI SIMIYU & ANOTHER V REPUBLIC** (*supra*) from this appeal, saying that in the former there was no indication of the language used by the trial court.
7. We have carefully considered the record of appeal as well as the submissions on record. The appellant was unrepresented before the trial court as well as the High Court. During the trial before the Chief Magistrate's Court at Eldoret the language used was English interpreted to Kiswahili. Following the reading of the charges the appellant responded:

"It is true".

8. The facts of the charges were read out to the appellant and again he stated:

"The facts are true".

The trial court proceeded to convict the appellant on the two counts on the strength of his plea of guilty. After the prosecutor told the trial court that the appellant was a first offender, the appellant stated in mitigation:

"I pray for forgiveness".

9. When appellant filed his appeal before the High Court, the record shows that there was interpretation from English to Nandi language. This, we believe, was in view of the appellant's allegation in his memorandum of appeal that before the trial court the charge was not fully explained to him in a language that he understood.
10. On our part, we do not find any fault with the manner in which the proceedings were conducted in the two courts below. The plea of guilty was unequivocal, we so hold. There is no evidence that the appellant did not understand Kiswahili language. If that were so, he would have raised the issue of language barrier right from the beginning, but he did not. Instead he fully participated and appropriately responded to questions posed to him in the proceedings. None of the authorities cited by the appellant's counsel is relevant in this appeal.

Consequently, the appeal against conviction and sentence must fail. We so find.

DATED and delivered at Eldoret this 10th day of December, 2015.

D. K. MARAGA

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR