



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: ONYANGO OTIENO, AZANGALALA & KANTAI, JJ.A)**

**CRIMINAL APPEAL NO. 221 OF 2011**

**BETWEEN**

**GILBERT SHIKONDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from a conviction and or Judgment of the High Court of Kenya at Kakamega*

*(I. Lenaola, J.) dated 29.9.2010)*

**in**

**HCCR.A.NO. 72 OF 2010)**

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**JUDGMENT OF THE COURT**

**Gilbert Shikondi**, the appellant was after trial convicted by the Chief Magistrate at Kakamega (**H.I. Ong'udi**, *as she then was*) of defilement of a girl contrary to **section 8 (1)** as read with **section 8 (4)** of the Sexual Offences Act No.3 of 2006 and sentenced to serve 15 years imprisonment. His first appeal to the High Court at Kakamega (**Lenaola, J.**) was summarily dismissed on 29<sup>th</sup> September, 2010.

The appellant had lodged before the High Court grounds of appeal in his Petition of Appeal and now challenges before us the medical evidence adduced at the trial, his identification and failure to call essential witnesses.

When **Mr. Abele**, learned Assistant Director of Public Prosecutions, addressed us, but he was apparently not aware that the appellant's appeal before the High Court had been summarily rejected. However, when we alerted learned counsel of that position, he was of the opinion that the summary dismissal was wrong. The learned Assistant D.P.P. was, in our view, plainly right.

The only cases in which an appeal may be summarily rejected are those laid down in **section 352 (2)** of the Criminal Procedure Code which provides as follows:-

***“Where an appeal is brought on the ground that the conviction is against the weight of the***

*evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the judge certifying that he had perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint.”*

A plain reading of the grounds of appeal lodged by the appellant before the High Court shows that **section 352 (2)** of the Criminal Procedure Code could not apply. The first appellate court therefore erred in summarily dismissing the appeal before it. In the premises, we need not consider the other complaints made by the appellant.

Accordingly we allow this appeal and quash the order for summary dismissal.

The appellant's appeal lodged in the High Court is reinstated to hearing according to law before a Judge other than Lenaola J.

**DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF JUNE, 2014.**

**J.W. ONYANGO OTIENO**

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**JUDGE OF APPEAL**

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**F. AZANGALALA**

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**S. ole KANTAI**

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**JUDGE OF APPEAL**

*I certify that this is*

*a true copy of the original.*

**DEPUTY REGISTRAR**