



**IN THE COURT OF APPEAL  
AT ELDORET  
CRIMINAL APPEAL NO. 53 OF 2010  
BETWEEN**

**EBENYO YEIYA ELIM.....APPELLANT  
AND**

**REPUBLIC.....RESPONDENT**

*(Appeal from and order of the High Court of Kenya at Kitale (Ombija, J) dated 18<sup>th</sup> January, 2010  
in  
H.C.CR.A. NO. 53 OF 2009)*

\*\*\*\*\*

**And**

**EBENYO YEIYA ELIM.....APPELLANT  
AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT OF THE COURT**

In the court of the Senior Resident Magistrate at Lodwar, the appellant before us, **EBENYO YEIYA ELIM**, was on the 28<sup>th</sup> July, 2009, recorded to have pleaded guilty to a charge of defilement contrary to **Section 8(1)(4)** of the Sexual Offences Act, No. 3 of 2006. The particulars contained in that charge were that on the 21<sup>st</sup> day of July, 2009 in Turkana West District in Rift Valley Province, the appellant intentionally and unlawfully committed an act which caused penetration to the genital organ of **A.E.S**, a child aged sixteen years.

The record of the magistrate shows that the proceedings in that court were being conducted in “English to Kiswahili/Turkana” and interpretation was being done by one *J. Lotiir* whose designation is shown as “Ass/EO” which we take to mean “Assistant Executive Officer”. The charge was read to the appellant and the record of the magistrate shows:-

***“Accused person states in Turkana: “the main count is true.”***

The magistrate accepted that statement as an admission by the appellant of the charge read out to him. The court prosecutor, one Inspector Kemboi, then narrated to the magistrate the facts on which the Republic was relying to prove the charge against the appellant. Those facts were that:-

***“----- on the 21<sup>st</sup> July, 2009 at about 9 p.m. the complainant was at her home. She is one E.S aged 16 years. The accused person went and told the girl that he had taken beads to her an indication that he wanted the girl as a wife. When the complainant refused the accused person’s request for marriage, the accused person threatened her with death. Therefore the accused caught hold of the complainant and coerced her by use of force to have sexual intercourse. The accused person used force to defile the girl and later went away. The complainant made a report to her aunt M.E who took her to K Mission hospital where she was treated and referred to K Police Station. The matter was reported to K Police station where investigations were conducted. The complainant was issued with a P3 form. The P3 form was completed and is dated 25<sup>th</sup> July, 2009. The P3 form confirms that the girl was defiled. I now produce the P3 form as Exhibit NO. 1. I also have treatment records for the complainant which I***

**now produce as Exhibit NO. 2. Thereafter accused was arrested and charged with the offence now before the court”.**

The magistrate then turned to the appellant and asked him:-

**“COURT: Accused person are the facts true?”**

**“Accused person states in Turkana: Facts are true.”**

Thereupon the magistrate convicted the appellant and in mitigation of sentence the appellant is recorded as telling the magistrate once again in Turkana language:-

**“the girl was given to me by the in-laws.”**

The magistrate sentenced him to fifteen years imprisonment. The appellant appealed to the superior court and he listed four grounds of appeal in that court. These were:-

**“1. THAT: Your Lordship, I pleaded guilty to the trial.**

**2. THAT: Your Lordship, I am from L which is far away from Lodwar and I have not been convicted since I was born. I was misdirected by the police to plead guilty for the reason that I will be only sentenced to six (6) months but now is fifteen (15) years imprisonment.**

**3. THAT: Your Lordship because of that pressure from the police I was confused and agreed with them what I didn't understand the law as required therefore my fundamental (sic) rights were violated by the police to give me a lot of pressure while they knew it was harsh sentence of my side.**

**4. THAT: Your Lordship I was on 28<sup>th</sup> July, 2009 at K, Lodwar and I was not told anything like appeal until I was transferred to Kitale main prison then I was informed about appeal this month of August, 2009.”**

Ombija, J looked at these grounds and on 18<sup>th</sup> January, 2009 he summarily rejected them. The appellant now comes to us by way of a second appeal and he basically repeats his allegations in the superior court that the police had intimidated and put pressure on him to plead guilty and for the first time he raises the issue that he did not understand the proceedings because they were conducted in a language which he did not understand.

There is nothing in the record of the magistrate which would suggest that the appellant was under any pressure from anyone to plead guilty to the charge. It is clear from the record that the magistrate was at pains to ensure that the appellant understood the proceedings and voluntarily pleaded guilty. Before us, he flatly denied everything; that he had pleaded guilty at all; that there was a Turkana interpreter as the magistrate's record shows or that he addressed the magistrate in Turkana language as the record shows. Before us, we had a Turkana interpreter called *John Akuta* and through him the appellant denied everything that had taken place before the magistrate and the only thing he wanted was that his case ought to be heard afresh.

We have no doubt that the appellant perfectly understood the proceedings in the magistrate's court as the same were being interpreted to him in his mother tongue; that he voluntarily pleaded guilty to the charge brought against him under **section 8 (1)** of the Sexual Offences Act which provides:-

**“A person who commits an act which causes penetration with a child is guilty of an offence termed defilement”**

**Section 8(4)** provides that:-

**“A person who commits an offence of defilement with a child between the age of sixteen and eighteen**

***years is liable upon conviction to imprisonment for a term not less than fifteen years.”***

The victim of the appellant’s sexual molestation was said to be sixteen years. The appellant did not raise any of the defences set out ***in Section 8(5)(a) and (b)***. No issue of law was raised by the appellant before us and we are satisfied that the High Court was perfectly entitled to summarily reject his appeal under ***Section 352(2)*** of the Criminal Procedure Code. That being the view we take of the matter we order that the appellant’s appeal be and is hereby dismissed.

***DATED and DELIVERED at ELDORET this 17th day of FEBRUARY, 2011.***

***R.S.C. OMOLO***

.....  
***JUDGE OF APPEAL***  
***S.E.O. BOSIRE***

.....  
***JUDGE OF APPEAL***

***J.W. ONYANGO OTIENO***  
.....  
***JUDGE OF APPEAL***