



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

(CORAM: MAJANJA J.)

CRIMINAL APPEAL NO. 78 OF 2015

BETWEEN

HASSAN SAID ABDALLA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. G.N. Sitati RM delivered on 15th July 2014 at the Mumias Senior Principal Magistrate's Court in Criminal Case No. 670 of 2014)

JUDGMENT

1. This is an appeal against conviction and sentence by the appellant, **HASSAN SAID ABDALLA**, who pleaded guilty and was sentenced to life imprisonment for the offence of defilement contrary to **section 8(1) and (2)** of the *Sexual Offences Act*. The particulars of the offence were that on 2nd July, 2014 at 5.00pm in Mumias District within Kakamega County, he intentionally caused his penis to penetrate the vagina of GVM a child aged 7 years.

2. The appellant was arraigned in court on 4th July 2014 and when the charges were read to him in Swahili and he responded “*Ni Ukweli*” thereafter a plea of guilty was entered. The facts were also read to him and he responded, “*Naelewa ni Kweli.*” The matter was deferred for sentencing to another date.

3. When the matter came up on 15th July 2014, the appellant requested that the charges be read to him afresh. The trial magistrate obliged and after the charges were read to him in Swahili, he stated, “*Ni Ukweli*” and a plea of guilty was duly entered and the facts were once again read to him. He accepted the facts and was convicted on his own plea of guilty. The appellant prayed for forgiveness when called upon to offer mitigation. He was thereafter sentenced to the mandatory sentence of life imprisonment.

4. The requirements of recording a guilty plea provided for under **section 207** of the *Criminal Procedure Code (Chapter 75 Laws of Kenya)* were elucidated in *Adan v Republic [1973] EA 445* as follows: -

- i. The charge and all the essential ingredients of the offence should be read to the accused in his language or in a language he understands
- ii. The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.
- iii. The prosecution should immediately state the facts and the accused should be given an opportunity to dispute or explain the fact

or add any relevant facts.

iv. If the accused does not agree with the facts or raises any question as to his guilt, his reply must be recorded and a change of plea entered.

v. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.

5. In *John Muendo Musau v Republic NRB CA No. 365 of 2011 [2013]eKLR*, the Court of Appeal added that if the accused wishes to change his plea or in states anything in mitigation that negates any of the ingredients of the offence he has already admitted and been convicted, the court must enter a plea of not guilty. That is to say that, an accused person can change his plea at any time before sentence.

6. I have reviewed the proceeding in light of the principles I have outlined and I find and hold that the appellant's guilty was clear and unequivocal and I am satisfied that the trial magistrate followed the laid down procedures for recording a guilty plea. The facts disclosed the offence of defilement and the appellant accepted his guilt twice. When he had an opportunity to change his plea, the appellant pleaded guilty. Nothing emerged from his mitigation that negated the guilty plea.

7. I dismiss the appeal.

DATED and DELIVERED at KAKAMEGA this 5th day of April 2018.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Ng'etich, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.



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