



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HC. CR. REV. NO. 84 'B' OF 2019

(CORAM: R. E. ABURILI - J.)

OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS, SIAYA COUNTY.....APPLICANT

VERSUS

COLLINS OYOO OWUOR.....RESPONDENT

(Being an application for Revision vide Criminal Case No. 334 of 2019 of PM's Court

at BONDO Law Court dated 4.11.2019)

RULING

1. I have considered the request by the Prosecution vide letter dated 6/11/2019 seeking to revise ruling dated 4/11/2019 in Cr. 334/2019 **R vs Collins Oyoo Owuor**.
2. I observe that the ruling is in respect of refusal to grant the Prosecution an adjournment to call the last witness who was said to be engaged in invigilation of KCSE examination.
3. In his ruling, the trial court stated that since the matter was initiated in June 2019, the Complainant had never shown up in Count II.
4. The offence is that of kidnapping of a child **R.R.O (full name withheld)** and **D.J.O. [full name withheld]** seeking to dishonestly receive money from his father and in count II, the same charge with a different complainant.
5. However, Complainants in both Counts are minors and they gave evidence on oath as PW1 and PW2. The 1st complainant is aged 8 years whereas the 2nd Complainant D.J.O is 9 years. However, I observe that the two complainants gave evidence on oath without being subjected to voire dire examination. They are children of tender years. There is even nothing on record to show that they were giving evidence as minors. They were simply sworn to testify. It is irregular to take evidence of such young children without complying with **Section 19 of the Oaths and Statutory Declaration Act**.
6. I find the irregularity is likely to vitiate the trial as the law commands that voire dire examination on such children be undertaken to determine whether they understand the nature of an oath and whether they understand what telling the truth is.

7. Furthermore, the trial record does not show the language used by witnesses in giving evidence.
8. For the above reason, I find the request by the Prosecution merited, although on different grounds.
9. I exercise supervisory jurisdiction and quash the proceedings conducted before Hon. E.N. Wasike SRM in Bondo PM Cr. Case No. 334/2019 owing to their irregularity and order for a fresh trial to be conducted before another Magistrate of competent jurisdiction in the same station. The trial court record to be resubmitted to Bondo Law Courts with a certified copy of this Ruling and Order for implementation.
10. Orders accordingly.

Dated, Signed and Delivered at SIAYA this 27th Day of January 2020.

R.E. ABURILI

JUDGE