

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 52 OF 2012

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

VERSUS

GLADYS APONDI OSERO.....1ST ACCUSED

SOO.....2ND ACCUSED

RULING

1. In the course of preparing judgement in this case, the age of the second accused has become a matter of serious consideration, taking into account what the law says about criminal liability for minors.

2. The prosecution did not have the age of the second accused assessed or, alternatively, proved by other means. The defence has equally not made an effort to place before the court material on his age. His age has been variously been said to be at 12 and 14 as at December 2012. When he testified he stated that he was born in 2002, which placed him at the age bracket of 10 to 11 in 2012. Given the provisions of section 14(2) of the Penal Code, Cap 63, Laws of Kenya, that could be critical with respect to criminal responsibility of children of immature age, and later sentencing, should the court find him guilty.

3. Consequently, it would be critical to establish the age of the second accused as at the date of the commission of the offence, as a preliminary issue before judgment is prepared and delivered.

4. Accordingly, I direct as follows:

(a) That the second accused person, SOO, shall be escorted to the Kakamega County Referral Hospital for the purpose of assessment of his age as at 24th December 2012 and as at the date of the assessment;

(b) That the second accused and or his surety shall in the next fourteen days furnish the court with a copy of his certificate of birth; and

(c) That the matter shall be mentioned thereafter for compliance and fixing a date for judgement.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF FEBRUARY 2020.

W MUSYOKA

JUDGE