



REPUBLIC OF KENYA

IN THE HIGH COURT OF KAKAMEGA

HCRA NO. 18 OF 2017

GEOFREY AMALA ALIAS NGALA :::::APPELLANT

V E R S U S

REPUBLIC :::::::::::::::::::::::::::::::::::::::RESPONDENT

(Arising from the Judgment by Hon. E.W. Melala in criminal case No.333 of 2014at Principal Magistrate's court at Hamisi)

J U D G M E N T

1. **Geoffrey Amala alias Igala** was charged and convicted by , on 16th May, 2016 for the offence of Defilement , and sentenced to 20 years imprisonment .The appellant being dissatisfied with the Judgment filed this appeal citing several grounds.

2. I have had an opportunity of going through the proceedings (both original and typed) . I have found it difficult to make out what the court meant as some sentences appear incomplete, and unrelated.

3. The recorded evidence of PW1 and PW2 is very key to this complaint. However one can't exactly tell what their real evidence is . The problem is not the typing because the typist just typed what appears in the original record.

4. Secondly PW1 was aged 12 years then and it's not indicated that the court was satisfied that she could give sworn evidence .

PW2 was aged 8 years. No voire dire examination was conducted for her. The record does not show whether she gave sworn or unsworn evidence.

5. PW4 was not cross examined by the appellant and the record does not show whether he was ever given that opportunity to cross examine him ,or not.

6. The record also shows that in compliance with Section 211 Criminal Procedure Code the appellant elected to give an unsworn statement of defence . What followed is actually a sworn defence and he was cross examined.

7. Though this court is not a hand writing expert I can clearly distinguish the writing in the court proceedings and that in the Judgment dated 16th May, 2016 .

8. Upon considering all the issues I have pointed out above I find that there were serious procedural errors in the conduct of this case by the learned Trial Magistrate . It all amounts to a mistrial and I declare

it as such.

9. The charge facing the appellant is a serious one. It was committed in 2014 and he was convicted in 2016 and is serving a 20 years sentence. It would be in the interest of justice that the case be heard a fresh for a just determination of the same.

10. In the circumstances I allow the appeal, and set aside both conviction and sentence.

11. I direct that the appellant be arraigned before the Hamisi Senior Resident Magistrate's court for him to take a fresh plea on 25th August, 2017 . He will be tried by any competent court other than Mr. Evans. W. Muleka who should be sent a copy of this Judgment.

Orders accordingly.

Delivered, signed and dated this 18th of day August, 2017 .

H.I. ONG'UDI

JUDGE