



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**Criminal Appeal No. 45 Of 2014**

**From original Conviction and Sentence in Criminal Case number 416 Of 2013 of the Principal Magistrate's Court at Bondo – Hon. P.W MUTUA (Esq)**

**THOMAS ODUOR ONG`WEN ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was convicted and sentenced to ten years imprisonment on an alternative charge of indecent act with a child. Being aggrieved by the conviction and sentence, he filed this appeal. Before the appeal could be heard the state through prosecuting counsel sought a retrial on the ground that the age of the victim had not been ascertained. The appellant stated that he had no objection for the application for a retrial and as I am satisfied that the case is suitable for retrial, I hereby quash the conviction, set aside the sentence and remit the case back to the principal Magistrate's court for retrial before a magistrate other than the one who first tried it. The appellant be brought before that court for plea on 23rd February, 2015. In the meantime the appellant be remanded at the G.K. Prison, Kisumu. The Deputy Registrar to ensure compliance with this order.

**E.N. MAINA**

**JUDGE**

**Signed, dated and delivered in open court this 19th day February, 2015**

**In the presence:**

the appellant

Mr. Ruto -prosecuting counsel.

Moses Okumu – Court clerk