

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 115 OF 2012

JAMES MBITHI MUNYOKI.... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

From original conviction and sentence in Cr. Case No. 841 of 2011 at the Principal Magistrate's Court at Siakago by HON. S.M. MOKUA – SPM on 13/7/2012

J U D G M E N T

1. **James Mbithi Munyoki** was charged with the offence of Defilement of a girl under the age of thirteen (13) years contrary to section 8(1) and (3) of the Sexual Offences Act No. 3 of 2006. He also faced an alternative count of indecent act with a child contrary to section 11(1) of the Sexual Offences Act.
2. He pleaded not guilty to both counts and the matter proceeded to full hearing. He was eventually convicted on the principal count and sentenced to serve twenty (20) years imprisonment.
3. The complainant (PW1) who was aged thirteen (13) years then was examined by the court and found not to know the seriousness of an oath and gave unsworn evidence. This witness was the key witness yet her evidence was not subjected to cross-examination which was an error.
4. I therefore find that the omission to cross-examine her caused a mistrial. The appellant was convicted and sentenced on 13th July 2012 which is two years ago, and has not therefore served a substantial part of the sentence.
5. I therefore set aside the conviction and sentence and order a retrial. The appellant will be remanded in custody and arraigned before the Senior Resident Magistrate Siakago on 21st July 2014 for plea. The matter should be heard and concluded within six (6) months.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT EMBU THIS 18TH DAY OF JULY 2014.

H.I. ONG'UDI

JUDGE

In the presence of:-

Mr. Miiru for State

Appellant

Njue – C/c