



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Revision 4 of 2009

RULING

REVISION

I. **Background**

(1) A trial had commenced against one Joseph

Munoko Nanda, a male adult for the offence of
Defilement of a Minor child aged 5 years old
then.

- (2) He pleaded not guilty and his trial began on 23rd September 2006. The mother to the victim (P.W.1) and the minor (P.W.2) gave evidence before Chief Magistrate F.N. Muchemi (as she then was). She was assigned duties in Nairobi. Two years later the police suggested the trial begin from where it had stopped. On 14th July 2008, another Chief Magistrate S.N. Riech took evidence of a medical doctor who produced a P.W.3 on behalf of a colleague. The witness was availed as P.W.1. Then the evidence of a police officer was taken down described as P.W.7. A third Chief magistrate C.G. Mbogo took over the trial and was informed that the proceedings to proceed from where it had left off- by the Advocate for the accused. P.W.1 and 2 were recalled for cross-examination and not for a fresh hearing. They were examined by the said advocate further.
- (3) The proceedings were typed. The Hon. Chief Magistrate referred this matter by an order of the Court on 14/9/2009 on the irregularities undertaken in this matter.

(4) A revision file was opened.

II. Opinion

(5) The proceedings of the subordinate Court file is most certainly irregular and contrary to natural law and justice. Section 200(3) Civil procedure Rules had not been complied with. It is unclear whether the trial was to begin De novo or not.

(6) I hereby order that the trial and proceedings begin

De novo and the accused be retried a fresh. That

the hearing proceeds on a day to day basis until

the same is finalized before one trial magistrate.

(7) **Obiter Dictum**, Trial by instalments must at all

times be discouraged .

DATED THIS 28TH DAY OF MAY 2010 AT ELDORET.

M.A. ANG'AWA
JUDGE.