



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Criminal Appeal 45 of 2008**

**NOEL KORI..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

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**JUDGEMENT**

Before me is the Appeal of **NOEL KORI** (hereinafter referred to as the Appellant) against his conviction and sentence for the offence of **ARSON CONTRARY TO SECTION 332 (A) OF THE PENAL CODE**.

The Appellant had been arraigned before the lower court on 7/02/2008 and had the charges read out to him. He pleaded guilty. As required by Section 207 of the Criminal Procedure Code the facts were thereafter read out and the accused maintained his plea of guilty. The learned trial magistrate proceeded to convict the Appellant and after hearing his mitigation sentenced him to serve seven (7) years imprisonment. It is against this conviction and sentence that the Appellant now appeals.

In conceding this appeal, the learned state counsel **MR. ONSERIO** raised the issue of the age of the Appellants. In his written submissions the Appellant claims that he was 15 years old when convicted yet when questioned by this court he claims to have been born in 1982 which would make him 28 years old today. However I note that the learned trial magistrate did order an age assessment to be undertaken but no report was ever availed to court. Further before imposing sentence, the trial court did note that the Appellant appeared young. I do agree with Mr. Onserio that the age of the Appellant was a crucial factor which ought to have been determined prior to his plea being taken. This is because his age would determined whether the Appellant would be tried as a child or an adult, and would also have a bearing on the place of confinement upon conviction. For these reason I cannot find that the plea was unequivocal.

Mr. Onserio submitted that the state is not seeking a retrial. However in view of the serious nature of the charge and the strength of evidence as indicated by the facts as read out, it is in my view that justice would be best served by having this matter retried. The lower court should as a precaution ensure that an age assessment report is availed prior to plea.

This appeal succeeds the Appellant to be taken back before Wundanyi Law Courts for re-trial. Mention on 1/07/2010.

**Dated and Delivered at Mombasa this 14<sup>th</sup> day of June 2010.**

**M. ODERO**

**JUDGE**

Read in open court in the presence of:-

Mr. Onserio for state

Appellant in person

**M. ODERO**

**JUDGE**

**14/06/2010**

