



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 144 OF 2002

(From Original Conviction and Sentence in Criminal Case No.9 of 2002 of the Senior Magistrate's Court at Mombasa – E.N. Maina – S.R.M.)

MWAMENGI KISEU.....APPELLANT
V E R S U S
REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was tried in a trial which is now a nullity because of prosecution by a Police Constable contrary to Section 85 Criminal Procedure Code.

The State concedes the appeal but requests for a retrial. I am convinced that the offence is serious involving defilement of a young child. The Appellant has issued only 2 years of 10 year term in jail.

In the circumstances, the Appellant cannot be let off with such light sentence. Sentence. However, he is setting a chance of being tried again by another court. In the circumstances, he will suffer no prejudice.

I therefore allow the prosecution prayer that the Appellant be retried.
This appeal is allowed and conviction set aside.

I order a re-trial in Chief Magistrate's Court at Mombasa before a different Trial Magistrate.

This matter shall be mentioned before Chief Magistrate on 31/3/2004.

Dated at Mombasa this 29th day of March, 2004.

JOYCE KHAMINWA
J U D G E