

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL 113 OF 2003

DAVID NGUGI NJONJO..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

imprisonment and 6 strokes of the cane. Being aggrieved with the conviction and sentence he filed this Appeal.

EUREMA & ANOTHER vs. REPUBLIC C.A. No. 67 of 2002 (Mom l. I accordingly declare the proceedings invalid and quash the conviction and set aside the sentence.

I did peruse the trial court's proceedings. The Complainant was a child of 13 years according to the Doctors assessment, yet his evidence was not properly taken by the court as required under the Evidence Act. In addition, the Complainants character

Even if, in light of the case of MWANGI vs. REPUBLIC 1983 E.A. 522, I found that there would be sufficient evidence on the case that may result in a conviction, it is my view that ordering a retrial would prejudice the appellant. He is 81 years old. He was

I have found that the evidence on record could not sustain a conviction if properly considered. And even if I were wrong in my judgment, on account of the Appellant's age, I would still decline

I decline to order a retrial and direct that the Appellant should be set at liberty unless he is otherwise lawfully held. He is living out his bonus years. He should be allowed to do so peacefully.

Dated at Nairobi this 28th day of September 2004.

LESIIT

JUDGE