



**Ateya v Director of Public Prosecution (Criminal Revision
E305 of 2024) [2024] KEHC 15070 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E305 OF 2024
S MBUNGI, J
NOVEMBER 19, 2024**

BETWEEN

JUSTUS ATEYA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. The applicant herein was sentenced to serve three years' imprisonment for the offence of stealing contrary to section 268 as read with section 275 of the [penal code](#) on his own plea of guilty.
2. Later it emerged that he was under aged. As a result, the present application was made. The court ordered for the offender to be taken for age assessment which revealed that he was 17 years old.
3. Upon perusing the court record, the applicant was not afforded the safeguards entitled to him by the law during the proceedings in the lower court. Like, he was not afforded the services of a legal counsel or tried in a child friendly environment.
4. As opined by the prosecution counsel, the only cure to this anomaly is to have the subject retried again.
5. He will be afforded all necessary protections of a child undergoing criminal trial.
6. I therefore order he be released to the Officer Commanding Police Station who arrested him for commencement of a fresh trial which will be undertaken before another magistrate other than the one who presided over the initial trial.
7. Mention on 20.11.2024 before the Chief Magistrate Kakamega for further directions.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 19TH DAY OF
NOVEMBER, 2024.**

S.N MBUNGI



JUDGE

In the presence of :

Accused – present

Court Prosecutor – Mbonzo

Court Assistant – Elizabeth Angong'a

