



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. E010/2021**

(From the Original Conviction and Sentence in CMC Sexual Offence Case No. 32 of 2020 of the Resident Magistrate's Court at Wundanyi:  
E. M. Nyakundi - RM)

**DIRECTOR PUBLIC PROSECUTIONS.....APPLICANT**

**VERSUS**

**AMOS NGANGA MATHU.....RESPONDENT**

**CRIMINAL REVISION**

1. This matter has been placed before me for review by Hon. E. M. Nyakundi – Resident magistrate, Wundanyi.
2. The learned Honourable magistrate conducted the entire trial in the matter, and completed hearing. She convicted the offender and the matter was then left for sentencing.
3. Then it happened that the learned trial magistrate was out of her station and Hon. F. M. Nyakundi, Deputy Registrar/SRM Voi Law Court was holding the brief of trial magistrate in Wundanyi.
4. During that time Hon. F. M. Nyakundi had that matter placed before him for sentencing, and the learned magistrate proceeded to sentence the accused to a probation of 3 years, on the basis of the probation report and stating that the matter was urgent and was done in the best interest of the child.
5. I have seen the reasons provided by Hon. F. M. Nyakundi in his letter to me dated 15/4/2021.
6. In my view I do not think that the matter was so urgent that the sentencing could not await the trial magistrate to return to the station.
7. Although Hon. F. N. Nyakundi may have acted in the best interest of the child at that time, my view is that justice must be as transparent as possible and the tools and procedures we use to secure justice must not be seen to be unfair. It was necessary that having convicted the accused person, the sentence was carried out by the same trial magistrate who for all interests and purposes, was to be in the station sooner.
8. For these reasons I hereby quash the proceedings which took place on 25/2/2021 before Hon. F. M. Nyakundi, SRM, including the sentence meted to the accused of 3 years probation.
9. Instead thereof I make the following orders:
  - (i) **The Revision herein is successful.**
  - (ii) **The proceedings of 25/2/2021 before Hon. F. N. Nyakundi herein are quashed in their entirety.**
  - (iii) **This file shall be placed before Hon. E. M. Nyakundi, RM Wundanyi who shall fix the matter for a mention in the presence of all the parties, and thereafter proceed to sentence the accused person in accordance with the law.**

**DATED AND SIGNED AT MOMBASA THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2021**

**E. K. O. OGOLA**

**JUDGE**