



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL REVISION NO. 58 OF 2020**

**REPUBLIC.....APPLICANT**

**VERSUS**

**EOO.....1<sup>ST</sup> RESPONDENT**

**MOO.....2<sup>ND</sup> RESPONDENT**

**(Being a Request for Revision of a ruling for on withdrawal of charges of assault in Criminal Case 208 of 2020 of PM's Court at Siaya dated 10.6.2020 before Hon. M. Mwangi, RM)**

**RULING**

1. I have considered the request by the trial court and perused the trial court record in Siaya **PM Cr. Case No. 208 of 2020 Republic Vs EOO and MOO**.
2. I note that the complainant is a minor aged 16 years old. A child under the age of 16 years lacks the legal capacity to give consent to any act. In the same vein, the complainant herein who is under the age of 18 years could only give consent to withdrawal of the criminal charges against the accused persons through his next friend, not otherwise. The Investigating officer was not a next friend of the minor.
3. For the above reason, I find the withdrawal of the charges of assault against the accused person irregular. I set aside the order of withdrawal of the charge against the two accused persons and substitute it with an Order reinstating the charge against the two accused persons EOO and MOO.
4. The two accused persons shall be required to appear before the PM's court at Siaya for a fresh plea to be taken and proceedings conducted in accordance with the Law established.
5. Orders accordingly.

**Dated, signed and delivered at Siaya, this 11<sup>th</sup> Day of June 2020.**

**R.E. ABURILI**

**JUDGE**