



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL 68 OF 2019

WILLIAM OKELLO AWICH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal arising from Judgment, conviction and sentence vide Criminal (SO) Case No. 01 of 2019 at SRM's Court at Ukwala dated 21.8.2019 before Hon. C.I. Agutu, Senior Resident Magistrate)

JUDGMENT

The Appellant **William Okello Awich** was charged with the offence of defilement contrary to Section 8(1) as read with section 8 (2) of the Sexual Offences Act. He pleaded not guilty.

1. After full trial, he was convicted and sentenced to life imprisonment. The victim of defilement was a child aged 7 years.
2. On giving directions on appeal, it is observed that PW2 who is a child of tender years and the victim of the offence was never taken through Voire dire examination as required by law. That in itself vitiates the trial of the appellant.
3. The Prosecution requests for a retrial and the appellant does not object. In the premises, I find it necessary to determine this appeal on a preliminary point of law instead of wasting judicial time.
4. I quash the conviction of the appellant and set aside the life imprisonment imposed on him by the trial court. In its place, I order that the appellant be held in custody but he shall be retried by Ukwala SRM's court before another Magistrate other than Hon. C.I. Agutu.
5. The trial court file to be placed before Ukwala SRM forthwith and Mention on 8/10/2020 for directions.
6. This file is closed.
7. Prosecution to take note.
8. Orders accordingly.

Dated, signed and Delivered at Siaya this 5th Day of October, 2020

R.E. ABURILI

JUDGE

In the Presence of:

Appellant present virtually via Microsoft Teams from Prison

Mr. Okachi, Senior Principal Prosecution Counsel for State

Court Assistants: Brenda and Modestar