

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 58 OF 2018

[SOA]

DAVID OSANYA MUTURE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal against conviction and sentence in Ukwala PM [S.O.] No. 12 of 2018 dated 18.10.2018 before Hon. C.I. AGUTU – R.M.)

JUDGMENT

1. This appeal arises from the judgment, conviction and sentence passed **in Ukwala PM [S.O.] No. 12 of 2018 dated 18.10.2018 before Hon. C.I. AGUTU – R.M.** I have perused the proceedings and judgment in Ukwala SRM's Court, S.O. Case No. 12 of 2018. I observe that the proceedings were not properly conducted in accordance with the Law, which proceedings led to the conviction of the appellant with the offence of **Committing an indecent Act with a Child Contrary to Section 11 (1) of the Sexual Offences Act.**
2. Such irregular conduct of proceedings include the failure by the trial Magistrate, Hon. C. I. Agutu, to conduct a proper **voire dire** examination on a child aged 8 years.
3. In my humble view the omission is not a technical issue as the child was of tender years.
4. Accordingly, I allow this appeal, set aside the conviction and sentence of 10 years imprisonment imposed on the appellant on 18.10.2018 and order that the appellant shall be arraigned before Ukwala SRM's court to be tried afresh with the same offence before any other Magistrate other than Hon. C. I. Agutu, SRM.
5. This file to be resubmitted to Ukwala SRM's Court expeditiously with all the exhibits intact.

Dated, Signed and Delivered at Siaya this 19th day of November, 2019.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Ngetich prosecution Counsel for the Respondent/State

Appellant in person

CA: Modestar and Winnie