

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 22 OF 2012

REPUBLICPROSECUTOR

VERSUS

JAMES JAMLECK OWUYAACCUSED

DIRECTIONS

1. The Accused person herein, **JAMES JAMLECK OWUYA**, was arraigned before this Court (*Thuranira, J*) on 20/09/2012 where he pleaded not guilty to a charge of murder.
2. The trial began on 21/05/2014 before Dulu, J where a total of 5 witnesses testified. The judge was transferred before the closure of the prosecution's case and on 02/10/2014 this Court gave directions upon the concurrence of all the parties that the case would proceed on from where it had reached. Due to lack of further witnesses, the prosecution closed its case on 19/05/2015 without calling any further evidence and the matter was set for ruling. The Counsels did not however tender any submissions at that time.
3. When the Court retired to consider the evidence and do the ruling, it realised that on 21/05/2014, PW1 a minor named M.A. testified. On conducting a *voire dire* examination, the Court was of the view, and it so directed that M.A. gives unsworn evidence. It so happened and it came out that M.A. was the only eye-witness. However, this crucial witness was not offered for cross-examination to the defence Counsel who was then in Court. The record is also silent on whether the defence Counsel opted not to cross-examine the witness.
4. In order to uphold the provisions of **Article 50** of the Constitution and in view of the provisions of **Section 146** of the Evidence Act, Chapter 80 of the Laws of Kenya, it will be imperative for this Court to be satisfied of the parties' position in view of the foregone scenario.
5. I do hereby direct that the parties address this Court on whether the state of the proceedings relating to PW1 so as to enable this Court give further directions.

It is so ordered.

DELIVERED, DATED and SIGNED this 15th day of July, 2015

A. C. MRIMA

JUDGE