



**Republic v NOO (Criminal Case E011 of 2022)
[2023] KEHC 26697 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E011 OF 2022
WM MUSYOKA, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

NOO ACCUSED

RULING

1. When the accused herein testified on 12th October 2023, he stated that he was in Standard 8 in primary school, and that he was 18 years old, having been born in 2005. He could not recall the exact date of birth. I see from the probation report that his age at the time he was interviewed was 18 years.
2. The offence herein was committed on 18th August 2022. That would suggest that the accused was below the age of majority, and, therefore, a minor. Ideally, he should have been tried as a minor, and I wish that that had been brought to my attention in the course of the trial, so that I could treat him as such.
3. Section 221(3) of the *Children Act*, No. 29 of 2022, Laws of Kenya, applies the provisions of Part XV, Children in Conflict with the Law:

“... to a person who reaches the age of eighteen years before proceedings instituted against them pursuant to the provisions of this Act have been concluded.”

That would include the sentences available in the event of conviction.
4. Section 238(1)(2) of the *Children Act* provide that imprisonment and the death penalty are not sentences available to children, by commanding that

“No court shall order the imprisonment of a child”



and

“Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty on a child on a finding of guilty for such an offence.”

5. Now that it merges that the accused was probably a minor, his sentencing should be that of a minor, based on the guidelines in the *Children Act*, 2022. Before I do anything else in this matter, I will need material placed before me, documentary in nature, on the date of birth of the accused person, to satisfy myself as to the actual age of the accused person as at the date when the offence was committed.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 20TH DAY OF DECEMBER 2023

W MUSYOKA

JUDGE

In the presence of:

Mr. Arthur Etyang, Court Assistant

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Ouma, Advocate for the accused person.

