



**REPUBLIC OF KENYA**

**AT THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. E152 OF 2021**

**MAS.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant MAS applied for revision of his sentence on account of age. The Applicant claimed he was a minor by the time the offence in Mombasa CMC. CR. Case No. 2334 of 2014 was committed and that he was currently 24 years old.
2. The Applicant had been charged jointly with others with the offence of robbery with violence for which they were convicted and sentence to serve life imprisonment.
3. On appeal in Mombasa High Court Criminal Appeal No. 86 and 87 of 2019 the conviction of Luqman Khatib Mushee, Hashim Khalifa Said & MAS (Applicant herein) was confirmed. However it was established from the proceedings that 2<sup>nd</sup> Appellant was 17 years old by the time that he committed the offence and ought to have been detained at the President pleasure or committed to Borstal Institution or even Youth Corrective Centre but that was not done. 2<sup>nd</sup> Appellant was discharged since he had been in custody since 1<sup>st</sup> July 2019.
4. I have perused the lower court file and noted that although the charge sheet indicates that appellant and his co-accused were juvenile the issue of age of the applicant and his co-accused didn't arise except for A1 in CR. Case No. 2334 of 2014 and 2<sup>nd</sup> Appellant in CR.A No. 86 and 87 of 2019.
5. The court called for Age assessment Report and Shimo la Tewa Health Centre approximated his age at 24 years old whereas Dr. Sumbi E.M. of Coast General Hospital vide Report dated 7<sup>th</sup> December 2021 also gave an approximate age of 24 years.
6. This court further called for sentence Review Report and are dated 29<sup>th</sup> March 2022 was filed indicating that application can be considered as applicant committed offence as a teenager bouncing to severe negative peer pressure and that he is remorseful and deeply regrets his actions.
7. In consideration of the age assessment reports and the sentence Review Report the Applicants application is allowed. His sentence is revised to 3 years probation.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 11TH DAY OF APRIL 2022**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:**

Ogwel - Court Assistant

Mr. Chacha for the Applicant

The Respondent – present in person

**HON. LADY JUSTICE ANNE ONG'INJO**

**JUDGE**