



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL CASE NO.3 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WESLEY KIPKORIR ROTICH..... ACCUSED**

**RULING**

1. The subject in this case, WKR was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code
2. The charge was reduced to one of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code and the subject was committed to **SB** Institution for a period of 3 years on 17/3/2021.
3. The Prosecution filed an application dated 17/4/2021 seeking review of the Order committing the subject to the Borsal Institution on the ground that the birth certificate of the subject had been discovered showing he was born on 2/8/2001 and therefore he is 20 years old and not eligible to be committed to the Borstal Institution.
4. The Application was opposed by the subject's Counsel who attached an Affidavit sworn by the mother of the subject stating that he was born on 3/3/2005 and not 2/8/2001 as alleged by the Prosecution.
5. It is not clear how the Prosecution obtained the birth certificate of the subject after the conclusion of the trial.
6. The said birth Certificate has not been availed to this Court for verification.
7. The mother of the subject has sworn an affidavit stating the subject was born on 3/3/2005 which has not been controverted.
8. This Court relied on a social inquiry report which also confirmed that the subject is a Minor.
9. The social inquiry report also confirmed that the Accused person is suitable for a noncustodial sentence.
10. I accordingly review the earlier sentence and place the Accused person on probation for a period of two years.
11. During that period, the Kericho County probation officer to closely supervise and monitor the Accused person and to ensure that he continues with his education.

**Delivered, dated and signed at Kericho this 20<sup>th</sup> day of December, 2021**

**A. N. ONGERI**

**JUDGE**