



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 73 OF 2020

FOP.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence Resident Magistrate) against sentence in Sexual Offence Case No. 50 of 2020 at Principal Magistrate's Court, Siaya delivered on 10.9.2020 by Hon. Muthoni Mwangi)

RULING

1. The subject herein FOP was charged, tried and convicted of the offence of the defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act vide Siaya PM (SO) Case No. 50 of 2020. He was sentenced to custodial term of 3 years at Shikusa Borstal Institution on 17/9/2020.
2. However, the Probation Officer was unable to enforce the sentence and sought for revision of sentence to Probationary terms which prompted this court to call for Children's Officer's intervention and report on the subject.
3. The report dated 28/10/2020 by Ms. Beatrice Auma Oguda, Sub-County Children's Officer, Siaya/Gem Sub-counties no doubt reveal that the subject is a truant and is difficult to parent and is exposed to circumstances likely to interfere with his physical, mental and social development. He requires rehabilitation away from the community which is not ready to parent him because of his bad unacceptable character.
4. A further report dated 19/11/2020 reveals that the subject has been living at the mercies of police protection from mob injustice as he is in the habit of defiling young children from his family and is a petty thief.
5. That the subject cannot benefit from community based supervision as he is beyond parental control hence he is in need of care and protection under Section 119(1)(d)(f) & (q) of the Children's Act.
6. The Children's Officer has secured a place at Getathuru Reception and Rehabilitation School for Boys and seeks for an order that the subject FOP aged 15 years be commuted to the said school. The subject who is ably represented by Mr. Oduol advocate has no objection.
7. Accordingly, I revise the Order made by Hon. Muthoni Mwangi, RM in Siaya PM SO No. 50/2020 on 17/9/2020 committing the subject to Shikusa Borstal Institution for 3 years and set it aside and substitute it with an order committing the subject FOP aged 15 years to Getathuru Reception and Rehabilitation School for Boys for a period of three years to under intensive institutional rehabilitation and reformation.
8. I further order that this order shall be executed by the Manager, Kisumu Children's Remand Home.
9. Orders accordingly and this file is now closed.
10. **Dated, signed and Delivered at Siaya this 19th day of November 2020.**

R.E. ABURILI

JUDGE

In the Presence of:

Applicant Fredrick Omondi Philemon present in court

Mr. Oduol Advocate for Applicant

Mr. Okachi, Senior Principal Prosecution Counsel for State

Court Assistant: Brenda