

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

REVISION NO. 1 OF 2018

P.M.M.APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING OF THE COURT

1. P.M. Mutuku & Co. Advocates for the Applicant in a letter dated 20/12/2017 on behalf of the Applicant herein P.M.M. has sought for the review of sentence passed by the trial court in **Machakos CMCR. NO. 525 of 2017** wherein the Applicant was sentenced to serve one (1) year imprisonment or an alternative fine of Kshs. 200,000/=.

2. The grounds in support of the review are that the Applicant is a minor yet to attain age of majority and that he was not accorded legal representation and finally that the trial court did not thoroughly appraise itself about the fact of the matter before meting out the sentence. The copies of the Applicant's birth certificate and child health card were availed for perusal.

3. Mr. Machogu learned Counsel for the DPP submitted that on their part they concede to the Application since the birth certificate and child health card availed shows that the Applicant is still a minor and ought to have been given legal representation pursuant to the provisions of Article 53 of the Constitution and Section 186 of the Children's Act. Learned Counsel sought for a retrial in the matter and submitted that the Applicant will not be prejudiced in any way. He sought reliance in **Machakos Revision Number 10 of 2016**.

4. I have considered the Application and the brief oral submissions of learned Counsels as well as the documents annexed to the Application namely a birth certificate and child health card belonging to the Applicant. I have perused the lower court proceedings in **Machakos Chief Magistrate's Criminal Case Number 525 of 2017** and note that the Applicant and another had been charged with an offence of being in possession of bush meat without a certificate of ownership contrary to Section 98 of the Wildlife Conservation and Management Act 2013 and that upon a plea of guilty being entered the Applicant was ordered to serve one (1) year imprisonment with an option of paying a fine of Kshs.200,000/=. The lower court proceedings do not indicate whether or not the Applicant had been given legal representation.

5. The power of revision granted to this court is vide Sections 362, 364 of the Criminal procedure Code as well as Article 165 (6) of the Constitution to call for the record of the subordinate court in order to satisfy itself on the legality, propriety or otherwise of the proceedings conducted by those courts or tribunals. In the present case it is clear that the Applicant who was born on 29/09/2000 as per the birth certificate presented had been a minor at the time he was hauled to court for plea and was required to have been given legal representation as required under Section 77 and 186(b) of the Children's Act. It is also noted that the Applicant had been ordered to serve imprisonment for one year in default of payment of fine which is contrary to Section 190 of the Children's Act which forbids imprisonment of minors save only for those found suitable for rehabilitation school.

6. This court has been requested to revise the sentence imposed on the Applicant and set him free with an option of community punishment. However the learned Counsel for the DPP is of a different view and suggests for a retrial. It is noted that the Applicant was not accorded legal representation as provided for under Section 186 (b) of the Children's Act and as such the Applicant's conviction on a plea of guilt should not be allowed. The same should be set aside and the Applicant be retried again after being accorded the requisite legal representation and the trial court would definitely deal with the matter as appropriate bearing in mind that the Applicant is currently still a minor. Consequently, the trial court's order made on 24/11/2017 is hereby set aside and the Applicant be released from prison custody and he be retried for the offence charged before a competent court differently constituted.

Orders accordingly.

Dated, signed and delivered at Machakos this **22nd** day of **March**, 2018.

D. K. KEMEI

JUDGE

In the presence of:

Thuku for P. M. M. -for the Applicant

Machogu - for the Respondent

Kituva - Court Assistant