

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

REVISION NO.2 OF 2018

J K C.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

REVISION ORDER

J K C was charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code. The particulars of the charge are that on 3/2/2018 at [particulars withheld] Area in Laikipia County, unlawfully assaulted Dennis Kibet and occasioned him actual bodily harm.

The accused pleaded guilty to the offence and was sentenced to a fine of Kshs.25,000/= in default 5 months imprisonment.

This case was brought to the attention of this court by the Children's Officer Nyahururu to the effect that the accused is a minor aged 17 years and still a student. This court requested for an age assessment and a probation officer's report.

The accused's age was assessed as 17 years and therefore a minor. Before the trial court, during mitigation, the accused pleaded for leniency and the record shows that he claimed to have a small child at home, which is not the case as deduced from the probation officer's report. From the probation officer's report accused is a standard 7 drop out and not a student.

Being a minor, the trial court should have sentenced the accused under the provisions of the Children's Act. The accused pleaded guilty, he was treated as first offender and the complainant did not suffer any serious injuries. The trial court should have sought a social enquiry report before sentencing the accused. I think the sentence was harsh. Being a child, fine and custodial sentence should not have been preferred to the other alternative sentences available under the Children's Act (See section 191 of Children's Act).

I have read the probation officer's report. Accused is said to be a person of good conduct, not known to abuse any substances or alcohol and is well regarded by the local community. It is my view that a non custodial sentence should have been preferred. I will revise the sentence of the trial court and set it aside. For the above reasons I sentence the accused to serve 3 years on probation.

Dated, Signed and Delivered at Nyahururu this 12th day of April, 2018.

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R.P.V. WENDOH

JUDGE