



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CRIMINAL REVISION CASE NO. 113 OF 2018**

**JOHNSON MBUVI NGUVA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Arising from the sentence and order in Mwingi Senior Resident Magistrate's Court Criminal Case No. 36 of 2018 by G. W. Kirugumi S R M on 13/04/18)*

**R U L I N G**

1. By a letter dated the 17<sup>th</sup> day of **April, 2018**, **C. K. Nzili Advocates** seek Revision of an order by **Hon. G. W. Kirugumi**, Senior Resident Magistrate, Mwingi. It is premised on the ground that the Applicant who was charged with the offence of **Stealing Stock** (a he-goat valued at **Kshs. 4,500/=**) was erroneously sentenced to serve **four months** at **Kamiti Youth Correctional and Training Centre**, an institution that admits people between **17** and **21** years, yet, the Applicant is **22 years old**. This, according to the Applicant is an error on the face of the record that should be subjected to Revision.

2. The file was forwarded by the trial Magistrate who stated that she was misguided by the information availed by the Probation Officer who carried out the inquiry.

3. I am duty bound to re-consider the Lower Court record and come up with my own conclusion.

4. I have perused a report filed by the Probation Officer who recommended committal of the Applicant (Offender) to the **Kamiti Youth Correctional and Training Centre (KYCTC)** for a period of four (4) months.

5. **Section 67** of the **Prisons Act** provides thus:

*“(1) Notwithstanding the provisions of any other written law, where a person, who has attained the apparent age of seventeen years but has not attained the apparent age of twenty-one years, is convicted of an offence not punishable with death, the court may sentence such person to corrective training in a youth corrective training centre for a period of four months:*

*Provided that no person shall be sentenced to corrective training in a youth corrective training centre—*

*(i) if he has previously been detained in prison, a detention camp as defined in the Detention Camps Act (Cap. 91) (now repealed), an approved school as defined in the Children and Young Persons Act (Cap. 141) (now repealed), or a borstal institution as defined in the Borstal Institutions Act (Cap. 92); or*

*(ii) if he has previously been sentenced to corrective training in a youth corrective training centre; or*

*(iii) for failure to pay any tax or rate under the Personal Tax Act (Cap. 470): Provided further that no person shall be sentenced to corrective training in a youth corrective training centre unless the court is satisfied that accommodation for such person is available in a youth corrective training centre.*

*(2) Every person sentenced to corrective training in a youth corrective training centre shall be deemed to be a prisoner for the purposes of this Act, including remission of sentence.”*

6. Although no birth certificate, or evidence of age was adduced in evidence, an inquiry carried out by the Social Officer indicated that the offender was **21 years old** having been born in **1996** according to his National Identity Card. Had the learned Magistrate considered the fact that the offender held a National Identity bearing the year of birth of the offender as **1996** then she should have reached a finding that at the

time of commission of the offence the offender was **22 years old**.

7. Persons eligible to be sentenced to the Youth Correctional Centre must have attained the age of seventeen years but below the age of 21 years. Sentencing the Applicant to undertake training at the Centre was therefore erroneous.

8. In the circumstances, the sentence meted out was incorrect. Therefore in accordance with **Section 362 and 363 of the Criminal Procedure Code** I do set aside the sentence. The Applicant was supposed to be incarcerated for **four (4) months**. He has been in custody for a duration of **one and a half months**. Therefore I reduce the sentence to the term served. Consequently, he shall be released forthwith unless otherwise lawfully held.

9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 21<sup>st</sup> day of May, 2018.**

**L. N. MUTENDE**

**JUDGE**