



**Republic v LKC & another (Criminal Case 30 of 2015)
[2018] KEHC 5740 (KLR) (29 June 2018) (Sentence)**

Republic v L K C & G K C [2018] eKLR

Neutral citation: [2018] KEHC 5740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 30 OF 2015
M NGUGI, J
JUNE 29, 2018**

BETWEEN

REPUBLIC PROSECUTOR

AND

LKC 1ST ACCUSED

GKC 2ND ACCUSED

A custodial sentence can be imposed on a child where a child commits a serious offence

The case dealt with two minors who had been charged with the offence of murder. The case sets out that a custodial sentence can be imposed on a child who was convicted of a serious offence.

Reported by Kakai Toili

Criminal Law – sentencing - sentencing of a child offender - where the accused persons were charged with the offence of murder - both accused persons were minors at the time of commission of the offence - 1st accused person had attained the age of majority at the time of sentencing - what was the appropriate sentence to be imposed on the accused persons given that they were minors at the time of commission of the offence - Children Act, 2001 sections 190 and 191; Penal Code, Cap 63, sections 203 and 204.

Brief facts

The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. They were convicted of the offence of murder on June 13, 2018 after a full trial.

Issues

What was the appropriate sentence to be imposed on the accused persons given that they were minors at the time of commission of the offence?

Held

1. The accused were children at the time of commission of the offence. The 2nd accused had attained 20 years at the time of sentencing. His birth certificate indicated that he was born on July 26, 1998. The



- 2nd accused was therefore 17 at the time of commission of the offence. He was no longer a child, so the provisions of section 191(1) of the Children Act, 2001 (Children Act) were no longer appropriate for him.
2. The 2nd accused committed a serious offence, and as the older of the two brothers, he ought to have known that what they were doing was wrong. His act was reprehensible, and it led to the loss of an innocent life. In the circumstances, a custodial sentence was called for. The 2nd accused person was thereby sentenced to a term of 10 years' imprisonment.
 3. The 1st accused was a standard 6 pupil and 13 years old at the time of commission of the offence. The overarching objective of punishment for a child was the preservation of his life, his rehabilitation and his best interests. In accordance with section 191 (1) (g) of the Children Act, the 1st accused was sentenced to be detained at a suitable borstal institution for a period of 3 years.

The 1st accused was sentenced to be detained at a suitable borstal institution for a period of 3 years and the 2nd accused person was thereby sentenced to a term of 10 years' imprisonment.

Citations

Cases

Kenya

1. *Cheruiyot, Dennis Kirui v Republic* [2014] eKLR - (Explained)
2. *JKK v Republic* Criminal Appeal 118 of 2011; [2013] eKLR - (Explained)

Statutes

Kenya

1. Children Act (cap 141) sections 2, 190(2); 191(1)(g) - (Interpreted)
2. Children Act (Repealed) (Act No 8 of 2001) In general - (Cited)
3. Penal Code (cap 63) sections 25(1); 203; 204 - (Interpreted)
4. Probation of Offenders Act (cap 64) In general - (Cited)

Mr Nyadimo for the accused

SENTENCE

1. LKC and his brother, GKC were charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence are that on the night of December 9, 2015 in Bureti District, they murdered John Rono. They were convicted of this offence on the June 13, 2018 after a full trial. The prosecution indicated that they were both first offenders.
2. In mitigation on their behalf, learned counsel Mr Nyadimo stated that the accused are first offenders and were school going children at the time of commission of the offence. He urges the court to note the provisions of the [Children Act](#) with respect to punishment of child offenders, He submitted that the accused were remorseful and were pleading for leniency.
3. I directed the Probation Office, Kericho, to prepare a social inquiry report on the accused persons. The report indicates that the two are remorseful for their actions, but that they blame their mother for having a relationship with the deceased.
4. The accused were children at the time of commission of the offence. LKC was then sixteen years old, according to age assessment done when he was examined to determine whether he was fit to stand trial. GKC was indicated to be 21 years old. I note, however, that these indications in the assessment from the hospital were misleading. The 2nd accused, GKC, was born in 1998. He was therefore 17 when the offence was committed. The social inquiry report indicates that the 1st accused is now 16 years old.



He was therefore 13 years old when the offence was committed. The accused persons were therefore ‘children’ as defined in section 2 of the *Children Act*. The *Penal Code* provides at section 25(1) that a child offender shall not be sentenced to death, as does the *Children Act* at section 190(2).

5. The penalties for child offenders are provided under section 191(1) of the *Children Act*, which provides as follows:
- (1) In spite of the provisions of any other law and subject to this Act, where a child is tried for an offence, and the court is satisfied as to his guilt, the court may deal with the case in one or more of the following ways—
 - (a) by discharging the offender under section 35(1) of the *Penal Code* (cap 63);
 - (b) by discharging the offender on his entering into a recognisance, with or without sureties;
 - (c) by making a probation order against the offender under the provisions of the *Probation of Offenders Act* (cap 64);
 - (d) by committing the offender to the care of a fit person, whether a relative or not, or a charitable children’s institution willing to undertake his care;
 - (e) if the offender is above ten years and under fifteen years of age, by ordering him to be sent to a rehabilitation school suitable to his needs and attainments;
 - (f) by ordering the offender to pay a fine, compensation or costs, or any or all of them;
 - (g) in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of borstal institutions;
 - (h) by placing the offender under the care of a qualified counsellor;
 - (i) by ordering him to be placed in an educational institution or a vocational training programme;
 - (j) by ordering him to be placed in a probation hostel under provisions of the *Probation of Offenders Act* (cap 64);
 - (k) by making a community service order; or
 - (l) in any other lawful manner.
6. In its decision in Nyeri Criminal Appeal No 118 of 2011- *JKK v R* [2013] eKLR, the Court of Appeal stated as follows:

“The dilemma we face in this appeal was the ascertainment of the age of the appellant. Going by the remarks by the Judge, he was about 17 years when he was first arraigned in court in March, 2009, it is now four years later, which means he is now over the age of 18 years, therefore, he is not suitable to be subjected to any of the sentences provided for under the *Children Act*. The purposes of the sentences provided for under the *Children Act* are meant to correct and rehabilitate a young offender, ie any person below the age of 18 years while taking into account the overarching objective is the preservation of the life of the child and his best interest. A death sentence or life imprisonment are not provided for but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. The offence committed by the appellant is very serious, an innocent life was lost, the appellant though probably a minor when he committed the offence must serve a custodial sentence so that he can be brought to bear the weight and



responsibility of his omission or lack of judgment, by serving a custodial sentence. We are of the view that the appellant who is now of the age of majority cannot be released to the society before he is helped to understand the consequences of his mistakes, which can only happen after serving a custodial sentence.”

7. In *Dennis Kirui Cheruiyot v Republic* [2014] eKLR which the accused, who was aged 15 at the time he committed the offence but 20 at the time of sentence, was sentenced to a term of 10 years by the Court of Appeal in place of the life sentence that had been imposed on him by the trial court.
8. I have noted that the accused in this matter were children at the time of commission of the offence. The 2nd accused is now 20 years of age. His birth certificate indicates he was born on July 6, 1998. He was 17 at the time of commission of the offence. He is no longer a child, so the provisions of section 191(1) of the *Children Act* are no longer appropriate for him. He committed a serious offence, and as the older of the two brothers, he should have known that what they were doing was wrong. His act was reprehensible, and it led to the loss of an innocent life. In the circumstances, I find that a custodial sentence is called for, and I hereby sentence the 2nd accused, GKC, to a term of imprisonment for 10 years.
9. The 1st accused, LKC, was a standard 6 pupil at the time of commission of the offence. He is now 16 years old, which means that he was 13 years or so at the time of the commission of the offence. The overarching objective of punishment for a child is the preservation of his life, his rehabilitation and his best interests. In accordance with section 191(1)(g) of the *Children Act*, I hereby sentence him to be detained at a suitable Borstal institution for a period of three years, such institution to be identified by the Probation Office, Kericho.
10. The accused have a right of appeal to the Court of Appeal.

DATED DELIVERED AND SIGNED AT KERICHO THIS 29TH DAY OF JUNE 2018.

MUMBI NGUGI

JUDGE

