



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL REVISION NO. 1 OF 2016

PRINCIPAL MAGISTRATE,

MACHAKOS LAW COURTS.....APPLICANT

VERSUS

E N.....RESPONDENT

RULING ON REVISION

The request for revision is from Hon. Ocharo PM at the Machakos Chief Magistrates Court, and the subject of revision is the Respondent, who is a minor aged 17 years old. The Respondent, who was the 6th Accused person in **Republic vs Amos Mwenda & 5 Others, PCR Case No 115 of 2016**, was charged with the offence of being drunk and disorderly contrary to section 33(1) as read with section 33(2) of the Penal Code on 25th January 2016. He pleaded guilty and was fined Kshs.400/= and in default to serve 7 days imprisonment. The Respondent was unable to pay the fine and disclosed to the trial Court that he is 17 years old. The learned magistrate consequently sought review of the sentence to accord with the provisions of the Children’s Act.

I have considered the application by the learned magistrate. Section 364 of the Criminal Procedure Code provides for the powers of the High Court on revision as follows in this regard:

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the

High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

With respect to the present application, section 190(1) of the Children Act prohibits the imprisonment or placement of a child, in a detention camp, while Section 191 provides for ways through which a child offender should be dealt with including:

- a. discharging the offender under section 35 (1) of the Penal Code;
- b. discharging the offender on his entering into a recognisance, with or without sureties;
- c. making a probation order against the offender;
- d. committing the offender to the care of a fit person, or a charitable children’s institution
- e. ordering the offender to be sent to a rehabilitation school suitable to his needs and attainments if aged between 10 and 15 years;
- f. ordering the offender to pay a fine, compensation or costs;
- g. committing the child who has attained the age of sixteen years to a borstal institution;
- h. placing the offender under the care of a qualified counsellor;
- i. ordering the child to be placed in an educational institution or a vocational training program;
- j. ordering him to be placed in a probation hostel under provisions of the Probation of Offenders Act;
- k. making a community service order.

In light of the above provisions, and having regard to the circumstances including the nature of the offence and that a probation order is in not appropriate, the sentence of imprisonment imposed on the Respondent is hereby set aside, and the Respondent is discharged absolutely pursuant to section 35 of the Penal Code. I accordingly order that the Respondent shall be set free unless otherwise lawfully held.

This ruling and orders to be furnished to the Principal Magistrate at Machakos Law Courts; the Respondent herein namely E N and the relevant Prison authorities without delay.

DATED AT MACHAKOS THIS 26th DAY OF JANUARY 2016.

P. NYAMWEYA

JUDGE