



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL REVISION CASE NO. 6 OF 2016

NUNE ATHAR HASSANAPPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. By a letter dated 22nd June, 2016, C. K. Nzili & Co. Advocates sought review of a court order made on 7th June, 2016 by G. W. Kirugumi, Resident Magistrate, Mwingi, in respect of an Accused person, Nune Athar Hassan (Applicant).
2. The Applicant was charged with the offence of **Being Unlawfully Present in Kenya** contrary to **Section 53(1)(j)(2)** of the **Kenya Citizenship and Immigration Act Cap 172 Laws of Kenya**.
3. At the outset he denied this charge. On the 7th June, 2016 he changed plea and pleaded guilty to the charge. He was convicted and sentenced to pay a fine of **Kshs. 300,000/=** or serve **Six (6) months imprisonment**.
4. The Applicant seeks review on the grounds that:
 - He is a first offender.
 - He is underage.
 - The court did not verify the age before sentencing.
 - The charges are illegal.
5. When the Applicant was arraigned in court he was described on the charge sheet as a male juvenile. The record shows that the file was placed before the same Learned Magistrate on the 13th June, 2016 and on her own motion she ordered the Applicant to be escorted to **Mwingi District Hospital** for age assessment. Thereafter she recorded a confirmation that indeed the Applicant was a minor but indicated that she was *functus officio*.
6. The age assessment report by **Dr. Halima Mohamed Sabit** of **Mwingi District Hospital** which forms part of the record that I am examining indicate that the Applicant is **17 years old**.
7. The Children Act describes a child as – any human being under the age of **eighteen years**. The Applicant was a child in conflict with the law.
8. It was erroneous on the part of the Learned Trial Magistrate to convict and sentence him. In the premises, I do quash the conviction and set aside the sentence imposed.

9. Pursuant to the provisions of **Section 73(d)(vi)** and **189** of the **Children Act, 2001** I hereby substitute the conviction and sentence with a finding of guilty. Accordingly, he is discharged under **Section 35(1)** of the **Penal Code**.

10. The child herein was in company of refugees who were charged with the offence of residing outside the designated area without authority. In the premises, I direct that the Applicant shall be handed over to the Refugee Camp Officer at **Hagadera Refugee Camp** for vetting and further action.

11. It is so ordered.

Dated, Signed and Delivered at Kitui this 28th day of July, 2016.

L. N. MUTENDE

JUDGE