



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL REVISION NO. 88 OF 2016

REPUBLIC.....APPLICANT

VERSUS

JOHN KIMATU MWANZIA.....RESPONDENT

RULING ON REVISION

This revision originates from a letter dated 19th October 2016 by Fridah Mumbua, the District Probation Officer at Kangundo, seeking variation of the orders given on 19th October 2016 by Hon. M. Chesang, the trial magistrate in **R vs John Kimatu Mwanzia, Kangundo Criminal Case No. 914 of 2016**. The accused person in that case was arraigned in Court on 7th September 2016, and he pleaded guilty to a charge of creating a disturbance in a manner likely to cause a breach of the peace contrary to section 95(1)(b) of the Penal Code. The said trial magistrate then called for a pre-sentencing report from the Probation Service, and upon receiving the said report on 12th September 2016, placed the accused person at Kamiti Youth Corrective Centre for a period of six (6) months pursuant to the report by the probation officer.

On 19th October 2016, Ms Mumbua, the District Probation Officer at Kangundo, made an application before the trial Court seeking a variation of the order from six months to four months, with no objection thereto made by the prosecution. The trial magistrate in denying the application ruled that she had not been shown any document stating that the corrective centre can only admit convicts for four months and not six months, and that these are matters within the knowledge of the probation officer who should have advised the Court, and not the other way round. Further, that the probation report presented to the trial court did not indicate a period hence leaving it to the Court to determine the exact period of the victim's incarceration, and there was no mistake made by the Court. The trial magistrate then advised that the orders of 12th September 2016 be obeyed.

The said Probation Officer in her application states that the period of committal for corrective training is 4 months according to section 66 of the Prison Act, and that the accused is currently being held at the police station, as the police officers escorting the accused person were sent back by the Kamiti Youth Corrective Training Centre to vary the orders to 4 months. Further, that it is not the responsibility of the Probation service to escort the accused or to execute orders, and that it only assists in cases by providing a link with the Court and ensuring that the police have all the documents they need in order to execute an order.

After considering the grounds raised, I note that the power and duty to sentence an offender is given to the trial Court under section 12 of the Criminal Procedure Code, which requires a court to pass a lawful sentence which it is authorized by law to pass. In the present application, the law that authorizes a court to commit an accused person to corrective training is section 67 of the Prisons Act which provides as follows:

(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.

It is evident from the said section that the maximum period of corrective training that can be imposed by a court is four (4) months, and the period of six months corrective training imposed by the trial magistrate was therefore unlawful and was in error.

In addition, the role of a pre-sentencing report is to guide the Court in arriving at an appropriate sentence in the exercise of its discretion, however, while having regard to pre-sentencing reports, the Court must never abdicate its responsibility to pass sentence according to the law. The **Sentencing Guidelines** of the Kenyan Judiciary provide as follows in this regard as regards the role of pre-sentencing reports:

“To pass a just sentence, it is pertinent to receive and consider relevant information. The court should, as a matter of course, request for pre-sentence reports where a person is convicted of a felony as well as in cases where the court is considering a non-custodial sentence. In respect to children in conflict with the law, social enquiry reports should be requested for as a matter of course. Whilst the recommendations made in the pre-sentence reports are not binding, the court should give reasons for departing from the recommendations.”

It is notable that in the present application the pre-sentencing report dated 12th September 2016 recommended corrective training for the accused person and did not set a period for the said training, and the trial Court should have been guided by the law in setting the appropriate period.

I accordingly vary the order of the trial magistrate, and hereby commit the Accused person in **R vs John Kimatu Mwanzia, Kangundo Criminal Case No. 914 of 2016**, to corrective training at Kamiti Youth Corrective Training Centre for a period of 3 months from the date of this ruling, having taken into account the period the accused has spent in custody since his conviction on 12th September 2016.

This ruling and orders to be furnished to the Hon. M. Chesang, Resident Magistrate at Kangundo Law Courts; the Accused Person herein namely John Kimatu Mwanzia, the District Probation Officer at Kangundo, the Directorate of Public Prosecution at Kangundo, and the Officer in Charge at Kangundo Police Station without delay.

DATED AT MACHAKOS THIS 31ST DAY OF OCTOBER 2016.

P. NYAMWEYA

JUDGE