



IN THE HIGH COURT AT MALINDI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 15 OF 2014

(From original conviction and sentence in Sexual Offences case No. 4 of 2010 of the Chief Magistrate's Court at Malindi)

ERIC MUSYOKA APPLICANT

VERSUS

STATEPROSECUTOR

RULING ON REVISION

1. This file has been placed before me alongside Criminal (SO) 12/12 for revision pursuant to Section 364 Criminal Procedure Code. The report was made vide letter dated 30th July, 2014 by Gekanana Advocate.
2. I have now perused the Lower Court file. The accused therein was charged, tried and convicted for the offence of Defilement contrary to Section 8(2) of the Sexual Offences Act. Noting that the accused was a minor at the time of the offence, the trial court called for a pre-sentence report which was tendered on 28th July, 2014. On perusing the report, the court correctly observed that the accused did not qualify for admissions into a Borstal Institution since he was an adult by the date of the report and citing the mandatory sentence prescribed for the offence, the court proceeded to sentence the accused to life imprisonment.
3. According to the age assessment certificate on record, the accused was aged 17 years as at 19th March, 2010. The offence was committed in January, 2010. He was evidently a minor at the time of the offence. For purposes of sentencing, that was the relevant age.
4. The Court of Appeal stated as much in **Dennis Abuya v R [2010] eKLR** where the facts were almost similar to the instant one. The court stated inter alia:

“We do not understand the provisions of the Sexual Offences Act to authorize the imprisonment of minors...”

Section 8(7) of the Sexual Offences Act specifically provides that:-

“Where the person charged with an offence under this act is below the age of

eighteen years, the court may upon conviction sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap 92) and the Children Act, 2001 (No. 8 of 2001).”

The question of imprisoning a minor does not, therefore, arise under the provisions of the Sexual Offences Act.

5. The life sentence imposed by the trial court cannot stand. I do set it aside with the direction that the case be remitted back to the trial court to consider and impose a lawful sentence under the options provided by section 191(1) of the Children Act, without delay.

For this purpose the accused person will be produced before the court on 4th August, 2014.

An order of production to issue accordingly.

Delivered and signed at Malindi this 31st day of **July, 2014**

C. W. Meoli

JUDGE