

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

Criminal Appeal 192 of 2011

LYDIA KERUBO AMINGA APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

ORDER ON REVISION

Lydia Kerubo Aminga was charged before the Senior Resident Magistrate's Court in Keroka on 20th June, 2011 with the offence of stealing by servant contrary to section 281 of the **Penal Code**. She was convicted and sentenced to 30 months imprisonment on 15th September, 2011. She has, vide her petition filed on 21st September, 2011, appealed against both conviction and sentence. While forwarding the lower court file for purposes of the appeal, the Senior Resident Magistrate notified this court that it had come to his attention that the appellant was tried as an adult although at the time of the trial she was a minor. He has indicated that the age of the accused was not brought to the attention of the trial court and has attached a birth certificate which shows that the appellant was born on 9th June, 1995 meaning that she was 16 at the time of trial.

I have perused the record. Nowhere in the record throughout the trial was the issue of age raised. Further, in her petition of appeal, the appellant states on ground 4 that she is 18 years old. It is also curious that the birth certificate does not form part of the trial court record. Save for the contention on age, the charge appears to have been proved. However, the accused being a minor ought not to have been sentenced to imprisonment. A probationary sentence would have been more appropriate.

In the circumstances, I order that the accused be released from custody forthwith to serve the remaining part of the sentence i.e 26 months on probation.

Revision dated signed and delivered at Kisii this 23rd day of January, 2012.

R. LAGAT KORIR
JUDGE