

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION 447 OF 2012

(From Original Conviction and Sentence in Criminal Case No. 209 of 2012 of the Senior Resident Magistrate's Court

at Wundanyi: M. Chesang (Mrs.) – R.M.)

J.M......**APPLICANT**

=VERSUS=

REPUBLIC.....**RESPONDENT**

RULING

The matter before court relates to the accused in **Criminal Case No. 209 of 2012**. The accused therein **J.M** was convicted by the trial court on a charge of Burglary and Theft and was thereafter sentenced on 5th July 2012 to serve six (6) months imprisonment. The accused after an age assessment was found to be aged 17 years. He was therefore a minor in terms of the Children Act 2006. Therefore although the accused could be held criminally liable in terms of Section 14 of the Penal Code the trial court ought not to have sentenced him to a term of imprisonment. An alternative sentence should have been considered. S. 190 of the Children Act places a clear restriction upon sentencing a child offender to a term of imprisonment. As such and invoking the powers of review granted to the High Court by Section 362 of the Criminal Procedure Code I hereby set aside the six (6) month term of imprisonment imposed upon the accused. The trial magistrate is hereby directed to impose an alternative sentence suitable for a child offender. Mention on 23rd July 2012 before Wundanyi Law Courts for an alternative sentence to be imposed.

Dated and Delivered at Mombasa this 19th day of July 2012.

M. ODERO
JUDGE