



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL REVISION CASE NO.210 OF 2010**

**P.K.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

I have been invited by counsel, Mr. L. R. Kipsang to exercise my jurisdiction under **sections 362 and 364** of the **Criminal Procedure Code** to examine the record of the court below in Molo P.M. Criminal Case No.2760/2010 and to satisfy myself as to the correctness or legality of the sentence imposed on the subject.

The subject, **P.K** and another were upon conviction on their own plea of guilty sentenced to a fine of Kshs.50,000/= or six months imprisonment in default for the offence of failing to comply with prohibited activities in the forest contrary to **Section 52(1) (2)** of the **Forest Act**. Counsel has stated that in view of the age of the subject which he gave as 16 years, the above sentence was unlawful.

On 20<sup>th</sup> December, 2010, the court (Wendo, J) directed that the subject's age be assessed and a probation officer's report be filed. Both were duly done. According to the probation officer's report the subject was born on 14<sup>th</sup> March, 1994, placing his age at 16 years at the time of the offence.

The doctor's assessment on the other hand is that the subject is approximately 19 years. The subject has personally appeared before me and even though I am not an expert in age assessment, he appeared younger than 19 years. This position is buttressed by confirmation from K Secondary School that the subject was in form II at the time of his arrest.

It is settled learning that an expert's opinion, like the opinion of the doctor herein is but only an opinion which the court may or may not take into account in arriving at a conclusion depending on the circumstances of each case. The period the subject has served was unlawful and I reiterate what I have said in previous similar cases that it is incumbent upon trial courts to inquire into the age of persons charged before them who appear to them to be children.

The subject is, for these reasons set free to go back to school, having wasted nearly two months.

**Dated, Delivered and Signed at Nakuru this 14<sup>th</sup> day of February, 2011.**

**W. OUKO**  
**JUDGE**