



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

REVISION CASE NO. 12 OF 2009

V.B.C.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

REVISION

Section 364 (1) of the Penal Code, Cap 75

This case came up before the Hon. Lady Justice Ang'awa for revision on 30/4/2009 when the judge ordered that the age of the accused (who had been convicted and sentenced to 19 years imprisonment) be verified.

The filed Age assessment report dated 17th February 2010 by the experts shows that the accused was 17 ½ years at the date of the examination in the year 2010. His conviction and sentence was on 25/03/09. In effect, the accused was therefore aged about 16 years at the date of Conviction and Sentence on 25/3/2009.

Under **Section 14 (2)** of the **Penal Code, Cap 63**, a person of 14 years is criminally liable and can be tried. A child is defined in **Section 2** of the **Children Act 2001 (Act No. 8 of 2001)** as a person under the age of 21 years. Clearly, the accused was a child as at the time of his conviction and sentence.

Under **Section 190 (1)** of the **Children Act**, “no child shall be ordered to imprisonment or be placed in a detention camp” and Under **Section 190 (2)** of the said Act “no child shall be sentenced to death”.

The Constitution has also provided in **Article 53 (1) (f)** that “every child has the right to be detained separately from adults and in conditions that take care of the child’s sex and age”. The trial Court did not seem to be alive to the fact that the accused was a child when it convicted him on 25/3/2009. The provisions of the Children Act and of the Penal Code must be read together and where there is inconsistency, the same must be resolved on the basis of what is in the best interest of the child bearing in mind that the Constitution in **Article 53 (2)** stipulates that “a child’s best interests are of paramount importance in every matter concerning the child”. In the light of these provisions, the trial Court should have committed the accused/minor to a rehabilitation institution.

Although **Section 8 (2)** of the **Sexual Offences Act** under which the accused was convicted provides the sentence to be for life, **Section 26 (2)** of the **Penal Code** does stipulate that “a person liable to imprisonment for life or for any other period may be sentenced to any shorter term”.

In the circumstances of this case, it is my view that it is in the interest of justice and of the minor that the minor be committed to a rehabilitation institution for a period of 5 years.

Pursuant to **Section 364 (1) (b)** of the **Criminal Procedure Code**, I alter the conviction and sentence and instead order that the accused shall be committed to a rehabilitation centre in Shikutsa Borstal for a period of five years.

DATED at **KERICHO** this 6th day of April, 2011

G.B.M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING
Applicant in person