



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Criminal Revision 3 of 2009

S.K..... APPLICANT.

VERSUS

REPUBLICRESPONDENT.

REVISION.

By a letter (undated) received in court on 9th October, 2009 counsel for the accused sought the courts discretion under section 262 of the Criminal Procedure code to call for, examine and review the record of proceedings in Kapenguria Principal Magistrates court in Criminal case No.[particulars withheld].

The grounds on which review is sought are:-

- (i) The accused is 17 years old and was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2006.
- (ii) The accused pleaded guilty and the learned trial magistrate sentenced the accused to twenty (20) years imprisonment which counsel contends is a sentence which is excessive considering
 - (i) that the accused is a minor
 - (ii) that the trial magistrate did not call for an age assessment report before convicting.
 - (iii) That the trial magistrate did not subsequently apply the Provisions of the Children's Act.

Faced with the complaint as above mentioned, I called for probation officers report and the medical officer West Pokot. It is common ground on both reports that the accused is 17 years old hence a minor.

I take cognizance of section 190 (1) of the Children's Act which provides that no child shall be ordered to imprisonment or to be placed in a detention camp.

Section 191 (1) further provides that:-

“In spite of the provisions of any other law and subject to the Act, where a child is tried for an offence and the court is satisfied as to his guilt, the court only deal with the case in one or more of the following ways.

- (a) discharging under section 35 (1) of the Penal Code.***
- (b) By discharging with or without sureties.***
- (c) Issuing a probation order.***
- (d) Committing offence to the care of a fit person (s) or a charitable institution.***
- (e) If between 10-15 years send to a rehabilitation school.***
- (f) Order for payment of fine or compensation***
- (g) If attained 16 years in accordance with any act providing for establishment and regulation of borstal institution.***
- (h) Placing offender in an educating institution.***
- (i) Placing offender in a Probation Hostel.***
- (j) Issue a Community Service Order.***

I have anxiously weighed the available option and considered all the relevant evidence and circumstances of this case. Having done so, I hereby sentence the accused to serve three (3) years in Shikusha Borstal Institution in Kakamega. Thereafter the accused will be released on a licence to be under the supervision of a Probation Officer Pokot for four (4) years by which time the licence shall be expired.

Dated and delivered at Kitale this 10th day of February, 2010.

N.R.O. OMBIJA.
JUDGE.

