



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE  
Criminal Case 40 of 2008**

**REPUBLIC.....PROSECUTOR.**

**VERSUS**

**STELLAH NANJALA.....ACCUSED.**

**REVISION.**

On the 12<sup>th</sup> day of May, 2009 I sentenced the accused to serve a sentence of two (2) years imprisonment at Shikusha Bostal Institution and subsequently three (3) years at Kakamega Women Prison.

In compliance with my said order the accused was taken to Shikusha Bostal Institution by a committal order of even date.

It came to pass that Shikusha Borstal Institution only accommodates boys. Consequently she could not be admitted at the said institution. Moreso, in the light of the fact that the order was not accompanied by a Probation Officers report.

Faced with that dilemma, the state counsel, Mr. Mutuku applied that the District Probation officer, Trans Nzoia West, do a report on the suitability of the accused being palced in a Borstal Institution. In the meantime, the accused was remanded at the Eldoret Juvenile Home. Mention was scheduled for 24<sup>th</sup> June, 2009, then on 8<sup>th</sup> July, 2009, then 22<sup>nd</sup> July, 2009 while awaiting the said Probation Officers report.

By a letter dated 22<sup>nd</sup> July, 2009, Mr. Michael Wafula, advocate for the accused, applied for revision of the orders issued on 25<sup>th</sup> May, 2009.

In compliance with section 365 (2) of the Criminal Procedure Code, I ordered both the advocates for the accused and the state counsel to address me on the issues at hand.

Mr. Michael Wafula, pleaded on behalf of the accused that in view of the Probation Officers report, the court should consider admitting the accused to probation at a Girl's Hostel or consider placing the accused to serve under Community Service Order of a specified period.

Mr. Mutuku, learned state counsel, took the view that placing the accused under Community Service order would not be appropriate. In submitting so, he placed reliance on paragraph 4 of page 4 of the Probation Officers report. He urged that hostility by the community against the accused would militate against non custodial sentence. That he may be subjected to harm in that event. That it would be in the interest of the accused to be committed to a Juvenile wing in a female prison for such period until she attains the age of majority. Having attained the age of majority she may then serve the balance of the 5 years in a female adult prison.

I have agonized over the matter. In the light of the Probation Officers report, I am of the view that placing the accused under the community service order would be inappropriate having regard to the hostility manifested by the community at least for now.

Accordingly, in line with the Probation Officers report, I hereby order and sentence the accused to serve 5 years imprisonment. Of the five (5) years, the accused shall serve the (2) years at the Juvenile Wing, at Kakamega Female Prison. Subsequently, the accused shall serve the balance being 3 years, at Kakamega Adult Wing of Women Prison. It is so ordered.

Dated and delivered at Kitale this 23<sup>rd</sup> day of July, 2009.

**N.R.O. OMBIJA.  
JUDGE.**

