



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Criminal Case 36 of 2008**

**REPUBLICPROSECUTOR
VERSUS
G.K.R ACCUSED**

RULING

I: Background

1. This High Court heard and concluded the trial against G. K. R to its finality. The court found him guilty for the offence of murder contrary to **Section 203** of the Penal Code.
2. The matter was coming up for sentencing when the advocate for the said G.K.R raised Preliminary Objection on this matter.
3. The first objection being that the charge/information was defective. At the time the offence was committed the subject was a minor. To state in the charge sheet as read with **Section 204** of the Penal Code was in error. This should not have been described. The information charged speaks of death being imposed if found guilty.
4. The law further states that under Section 25(1) of the Penal Code no subject under the age of 18 years old is permitted to be sentence to death. This is supported by the latest Act under **Section 190 (1)** of the Children's Act.
5. As the subject was a minor when the offence occurred he was therefore not afforded an opportunity to have his case heard in camera. This was therefore a mistrial. Where there is such mistrial the subject must be discharged. If he is then discharged because the court found him guilty as charged, he should be subjected to a second trial "*in camera*" as **Section 138** of the Penal Code would not allow a person to under go a second trial when they have either been acquitted or convicted of an offence.
6. The advocate pray I discharge the minor.

II: In reply by the state

7. The state said in reply that there was no miscarriage of justice. The courts hands are nonetheless tied. The court cannot acquit the minor at this stage.

III: Findings

8. This court is *functus officio* on the issue of finding of the subject guilty as charged. The only option the advocate has is to appeal against the findings of this court.

9. There must be a finality to a court case. If a finding has been arrived at the only option is an appeal unless it is to correct errors on the face of the record.
10. The trial was not a miscarriage as the subject is now an adult in 2009. The offence occurred in 2008 when he was a minor.
11. The application by way of a Preliminary Objection is rejected. It is dismissed.
12. On the issue of Sentence. I would agree that the law under **Section 25(1)** of the Penal Code and **Section 190 (1)** of the Children's Act would not permit a minor under the age of 18 years old to be sentenced to death. The subject is now 18 years old. Will he be subjected to Death? The reading of the **Section 25(1)** states "*at the time of the commission of the offence*" the subject was a minor then he would not be subjected to a death sentence.
13. The Preliminary Objection is overruled.

DATED this 12th day of November, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocate

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the Accused - present

P. Kiprop State Counsel instructed by the Attorney General for the state – present

Accused - present