

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 9 of 2008

REPUBLICPROSECUTOR

VERSUS

EDWIN MAOSA OBED ACCUSED.

R U L I N G

All the facts and circumstances of this matter are not in dispute. They are that the applicant, who was the accused in Mombasa Criminal Case No. 2917 of 2007, was charged in the Resident Magistrate's Court, Mombasa, with housebreaking and stealing contrary to sections 304(1) and 279(b) of the Penal code. He pleaded guilty to the charge and a Community Service Order's report was ordered.

However, he was not recommended for a Community Service Order, in consequence whereof he was sentenced to 18(eighteen) months imprisonment with effect from 28th September 2007. He has now, through his mother, applied for a revision on the ground that he accused was under 18 years of age at the time of the conviction.

Mr. Onserio for the State conceded that the application had merit on the basis that the applicant had raised certain pertinent issues. These were that the applicant was a minor at the time of sentencing; that the applicant was charged and prosecuted before the wrong court; that the court before which he was charged had no jurisdiction; that the sentence was excessive; and that the Probation Report did not reflect the parent's remarks at the interview as required under the Probation Act. As a result, some vital particulars about his age and station in life were not addressed.

The applicant has produced a copy of his birth certificate No. 228913 issued on 19th April, 1991. It shows clearly that the applicant was born on 11th January 1991. At the time that he was imprisoned on 28th September, 2007, he was 16 years and 6 months old. He was therefore a child within section 2 of the Children Act. As such, he should have been dealt with under the Children Act, and not under the Penal code. Failure to observe this elementary tenet has had a ripple effect. It rendered the proceedings before the Resident Magistrate a nullity for want of jurisdiction. It also led to the incarceration of a child with adult prisoners at Shimo La Tewa Maximum Security Prison, which could expose him to negative influences on his youthful mind. Indeed, a copy of an official school receipt for school fees shows that in January, 2007, he was in form II at Kaplong Boys Secondary School where his fees for the 1st term was paid. With all his faults, what thereafter has happened could have some serious repercussions on his future, by impairing his academic progress.

Too many errors have been committed in this matter, and these are clearly prejudicial to the applicant. He has already served 5 months jail out of an 18 months sentence which was imposed by a court without jurisdiction. In these circumstances, I find that the applicant has more than atoned for his offence, and that the best way to handle him at this juncture is to release him and give him an opportunity to farther his academic pursuits.

I accordingly release him unconditionally forthwith. It is so ordered.

Dated and delivered at Mombasa this 18th day of March 2008.

L. NJAGI

JUDGE