

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Criminal Appeal 103 of 2005

Peter Kipngeno CheruiyotAPPLICANT

-VS-

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was convicted on his own plea of guilty and sentenced to 4 years imprisonment with hard labour. He was charged with the offence of Arson contrary to section 332(a) of the penal code.

The facts of the case is that on the 19th September, 2005 at namely [*particulars withheld pursuant to section 76(5) of the Children Act, 2001*], the accused willfully set fire to a building namely a Boys Dormitory at Ksh.800,000/= the property of namely [*particulars withheld pursuant to section 76(5) of the Children Act, 2001*].

When the Application came up for hearing the Hon. Judge Kimaru requested the age of the subject to be assessed by a Doctor and a probation report by the District probation officer be prepared.

The subject was found to be 17 years old and a probation report was duly filed by the probation officer.

It would appear that the subordinate court did not ascertain the age of the subject during the time he was convicted and sentenced therefore he was not subjected to the trial according to the provisions of Children's Act 2001. He was sentenced to a custodial sentence of 4 years with hard labour before his age was ascertained.

I have re-evaluated the facts in this case and considering the Subject was convicted on his own plea of guilty, I have also taken into consideration the powers vested in this court in its appellate jurisdiction to vary or quash a sentence. It will be in the interest of justice according to the facts of this case to vary the sentence and replace it with a non custodial sentence as the error only occurred in sentencing.

Accordingly I sentence the subject to serve a probation period of one (1) year and the first six months the subject shall do community service.

It is so ordered.

Dated at Kericho this 1st day of February, 2006

MARTHA KOOME

JUDGE