

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL REVISION NO. 16 OF 2004
(From Kajiado Cr. C. 1221/03)

MARTIN KINYANJUI MUINDI.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

CRIMINAL REVISION

This file was placed before me by Deputy Registrar for purposes of revision. The accused a minor, appeared before District Magistrate II Kajiado charged with offence of stealing c/section 275 of the penal code. He pleaded guilty to the charge. In mitigation he said he was 16 years old and was sentenced to a fine of Kshs.5,000/= in default 9 months imprisonment at Juvenile Remand Home.

The said sentence is illegal in that under section 28 of the penal code as amended by Act 5/03, the default of 5,000/= should be 3 months imprisonment. 9 months in default was therefore excessive and improper.

Secondly the Kabete Juvenile Remand Home is purely a remand home for Juvenile prisoners awaiting trial. It is not a correctional institution. Before sentence the Magistrate should have let the minors age be assessed, and a probation officers report obtained to ascertain where the minor could be placed. The sentence is illegal, it is hereby revised and set aside. The minor has been at the said institution since 18.12.2003 which is about 3½ months now and there will be no reason why he should be held any further. The sentence is set aside and he is set at liberty unless otherwise lawfully held.

Dated, read and delivered this.....day of.....,2004.

R. WENDOH
JUDGE