



**SND v Republic (Criminal Revision E010 of 2024)  
[2024] KEHC 1000 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E010 OF 2024  
M THANDE, J  
FEBRUARY 9, 2024**

**BETWEEN**

**SND ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a letter dated 30.1.24, Hon. J. M. Nangea, Chief Magistrate, Kilifi Law Courts applied for revision of the sentence imposed upon the Applicant on account of his age.
2. The Applicant was charged in Kilifi Criminal Case No. E050 of 2024, with the offence of cutting, felling and removing forest produce, contrary to Section 64(1) as read with Section 64(2) of the *Forest Produce Conservation and Management Act*, 2006. On 24.1.24 the trial Magistrate Hon. S. D. Sitati, SRM, convicted the Applicant and sentenced him to pay a fine of Kshs. 50,000/= and in default 3 months imprisonment. Being unable to raise the fine, the Applicant is serving the custodial sentence. It has now been established that the Applicant is 17 years old as per a copy of his birth certificate. As such, a custodial sentence was not warranted in the circumstances.
3. The supervisory jurisdiction of this Court over subordinate courts has its underpinning in the *Constitution* of Kenya, 2010. Article 165 makes provision for the High Court. Clauses (6) and (7) thereof provide as follows:
  - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
  - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice



4. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
5. To give effect to this provision, the *Criminal Procedure Code* elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the *Criminal Procedure Code* provides:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
6. Section 364 confers upon this Court the power of revision as follows:
  1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
    - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - b. in the case of any other order other than an order of acquittal, alter or reverse the order.
    - c. ...
7. I have perused the lower court record and note that the Applicant’s birth certificate indicates that he was born on 2.3.07. He will be 17 years old on 2.3.24.
8. Article 21 of *Constitution* places a fundamental duty on the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. To this end, Clause (3) enjoins all state organs to address the needs of vulnerable groups in society, including children, as follows:

All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.
9. Article 53 provides for the rights of children. Related to the matter herein, is Cause 1(f) which provides:
  1. Every child has the right
    - (f) not to be detained, except as a measure of last resort, and when detained, to be held –
      - (i) for the shortest appropriate period of time; and
      - (ii) separate from adults and in conditions that take account of the child’s sex and age.
10. A child offender may only be detained as a measure of last resort and where such detention is necessary, it must be for the shortest appropriate period of time. Additionally, a child shall be held separate from adults and the conditions of detention must be age and gender appropriate. Section 238(1) of the *Children Act* accords with this constitutional prescription by providing that no court shall order the imprisonment of a child. To further protect children, Article 53(2) provides that their best interests are of paramount importance in every matter concerning them.



11. The reality in which we live is that children are and will continue to be in conflict with the law. When this happens, they are dealt with not as adults, but as children. Section 239 of the [Children Act](#) makes provision for the methods of dealing with such children as follows:

1. Where a child is tried for an offence, and the Court is satisfied as to their guilt, the Court may deal with the case in one or more of the following ways—
  - a. discharge the child under section 35(1) of the Penal Code (Cap. 63);
  - b. discharge the child on his or her entering into a recognisance, with or without sureties;
  - c. make a probation order against the offender under the provisions of the Probation of Offenders Act;
  - d. commit the offender to the care of a fit person, whether a relative or not, or a charitable children’s institution willing to undertake the care of the offender;
  - e. if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child’s needs and circumstances;
  - f. order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child’s parents or guardian;
  - g. in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the Borstal Institutions Act;
  - h. place the child under the care of a qualified counsellor or psychologist;
  - i. order that the child be placed in an educational institution or vocational training programme;
  - j. order that the child be placed in a probation hostel under the provisions of the Probation of Offenders Act;
  - k. make a community service order;
  - l. make a restorative justice order;
  - m. make a supervision order;
  - n. make any other orders of diversion provided for in this Part; or
  - o. deal with the child in any other lawful manner as may be provided under any written law.

12. Where a child is found guilty of an offence, the court, taking all circumstances in consideration may inter alia discharge such child under Section 35(1) of the [Penal Code](#). I have considered the circumstances herein. The guilt of the Applicant of the offence with which he was charged, is not in doubt. He was tried and found guilty by the trial court. Being a child however, he ought not to have been given a custodial sentence in prison. Accordingly, I do allow the Application for revision. The sentence imposed upon the Applicant is hereby set aside. Pursuant to the provisions of Section 239(1) (a) of the [Children Act](#), I discharge the Applicant absolutely under Section 35(1) of the [Penal Code](#).

**DATED AND DELIVERED IN MALINDI THIS 9<sup>TH</sup> DAY OF FEBRUARY 2024**

.....



**M. THANDE**  
**JUDGE**

