



**Republic v HSO & another (Criminal Case 23(E023) of 2022)  
[2024] KEHC 2584 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE 23(E023) OF 2022  
TA ODERA, J  
MARCH 7, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HSO ..... 1<sup>ST</sup> MINOR**

**SNG ..... 2<sup>ND</sup> MINOR**

**RULING**

1. The minors herein were charged with Murder contrary to Section 203 as read with section 204 of the [Penal Code](#). They were convicted of the said offences. In mitigation. Mr. Magara for the minors told this court that the minors are in their teens and he are remorseful and seek leniency of the court. This court called for a pre-sentence report which was filed herein by the children officer on 7<sup>th</sup> March 2024 and the same indicates that the minors herein and the deceased are cousins and they lacked proper parental care and guidance in their tender years and hence them became truants and started abusing drugs and alcohol. She found that the parents of the minors have a strained relationship with the parents of deceased and this started even before this case and they have not made any efforts to reconcile. The officer visited the minors at Manga remand home where they are currently being held and found that they were not of good conduct as they are hard to control as they defy instructions of the authority, they are verbally and physically aggressive to the other children in that home and are generally a bad influence to them. The report recommended that the home environment and the community are not favourable for reintegration is not children be committed to Shikusa Borstal institution Kakamega under section 239 (i) (g) of the [Children Act](#) 2022 to enable them acquire life skills. The supreme court in the [Muruatetu case](#) set down the following factors to be considered in sentencing in murder trials;
  - a) Age of the offender.
  - b) Being a first offender.



- c) Whether the offender pleaded guilty.
  - d) Character and record of the offender.
  - e) Commission of the offence in response to gender-based violence.
  - f) Remorsefulness of the offender.
  - g) The possibility of reform and social re-adaptation of the offender.
  - h) Any other factor that the court considers relevant.
2. Section 239 of the *Children Act* 2022 provides for the manner in which the courts are to deal with children in conflict with the law to wit;

Section 239 9. (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; (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 Methods of dealing with children in conflict with the law. 2022 Children 591 No. 29 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.

3. I have considered the nature of the offence its circumstances, the remand period, the youthful ages of the offenders. The fact they lacked parental guidance and care and that their home environment is not conducive to their welfare as observed by the children officer and also that they are truants. A custodial sentence is thus necessary in this case as this will reform them and they will get an opportunity to learn some life skills which may be useful to them in future. I proceed to commit H.S.O and S.N.G to Shikusa Borstal institution for 3 years each.

14 days Right of Appeal.

**T.A ODERA**

**JUDGE**

**7.3.24**

Beatrice Obutu Children County Children Coordinator: We seek mention in two weeks to enable us confirm the vacancy at Shikusa.

Order: Mention no 19.3.24 at 9.00am.



**T.A ODERA**

**JUDGE**

**7.3.24**

WB mother to HSO

And GK father to father to S.N.G

