



**Nyanga v Republic (Miscellaneous Criminal Revision  
E116 of 2004) [2024] KEHC 9425 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9425 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL REVISION E116 OF 2004**

**MS SHARIFF, J**

**JULY 23, 2024**

**BETWEEN**

**SARAH NYANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. I have perused the trial file namely Nyando SPM Criminal Case No. 456 of 2024: Republic –versus- Sarah Nyanga & Moses Matete and do note that indeed the copy of certificate of birth No. A1855154 dated 4.4.2019 reveals that the 1<sup>st</sup> Accused person was born on 15.2.2007 wherefore she is a minor aged 17 years and 5 months. The trial court thus erred in meting a custodial sentence of 20 years against the accused.
2. In light of the said error and regard being heard of the provisions of Sections 238 of the *Children Act* 2022 the 1<sup>st</sup> accused person ought not to have been given a custodial sentence. This court takes cognizance of the fact that the 1<sup>st</sup> accused committed a heinous offence but it should not escape the mind of the court that the 1<sup>st</sup> accused was she herself being defiled by the 2<sup>nd</sup> accused given that she was herself a minor and incapable of engaging in consensual sexual intercourse. This was one minor whom the 2<sup>nd</sup> accused had assigned the role of parenting another minor.
3. In exercise of the revisionary jurisdiction as clothed in this court by the provisions of article 165 (6) and (7) of *the Constitution* of Kenya 2010 I do hereby set aside the sentence of the 1<sup>st</sup> accused person.
4. I direct that a probation officer Kisumu do file a social inquiry report in respect of the 1<sup>st</sup> accused within 7 days from the date hereof.
5. In the interim I order that the 1<sup>st</sup> accused be placed in Kisumu Children’s Remand Home as she awaits sentencing.



6. Mention on 30.7.2024.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF JULY, 2024.**

**M. S. SHARIFF**

**JUDGE**

