



**NKW v Republic (Revision Case E485 of 2024)
[2024] KEHC 15897 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE E485 OF 2024
JM NANG'EA, J
DECEMBER 16, 2024**

BETWEEN

NKW SUBJECT

AND

REPUBLIC RESPONDENT

RULING

1. These are revision of sentence proceedings under the Judiciary’s Prison Decongestion Programme. The subject and two (2) others were on 19th September, 2024 charged with two counts of offences to wit, entering into a protected area without a permit or other lawful exemption Contrary to section 102(1) (a) as read with Section 102 (1) (b) of the Wildlife Conservation and Management Act and Conveying a trap into a protected area without a permit or any other lawful exemption Contrary to Section 102 (f) as read with Section 102 (1) (h) of the Same Act.
2. Specifically, the subject herein who is a minor pleaded guilty to the first count and was sentenced to two (2) years imprisonment. He denied the second count and the case is said to be pending determination.
3. The Probation Officer filed a report dated 27th September, 2024 which shows tha the subject is willing to join High School. It is opined that a non-custodial sentence is suitable for the subject although it is pointed out he had another pending criminal case.
4. Having perused the record of the trial court and th Probation Officer’s Report, it is noted that the subject is a minor aged sixteen (16) or thereabouts. He has already served two (2) months or thereabouts in prison. Since he is a minor, a custodial sentence should not have been meted out against him. Instead, the trial court ought to have sentenced the subject under The Children Act which provides for various non-custodial sentences for child offenders which include probation and discharge. The sentence imposed is therefore illegal.



5. Section 362 of the *Criminal Procedure Code* empowers the Court to revise an illegal order made by the subordinate courts as appropriate. Accordingly, the trial court's sentence is hereby set aside and substituted with an order unconditionally discharging the subject under the provisions of the *Children Act*, 2022 as well as Section 35(1) of the *Penal Code*.
6. Since he is also facing a pending criminal case, the subject will execute his own bond of Kshs. 20,000/= as security of his appearance in court for trial. Subject to the bond, the Subject be set at liberty.
7. It is directed accordingly.

RULING DATED, DELIVERED AND SIGNED AT NAKURU THIS 16TH DAY OF DECEMBER, 2024.

J. M. NANG'EA,

JUDGE

