



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL REVISION CASE NO. E027 OF 2021**

**CKW.....APPLICANT**

**VS.**

**REPUBLIC.....PROSECUTOR**

*(Being a Revision of the order made on 17<sup>th</sup> march 2021*

*in SPM Githunguri criminal case NO. 234 of 2021)*

**RULING**

1. CKW, the subject hereof, is **16years and 4 months old**.

2. The subject was charged before the Senior Principal Magistrate's Court at Githunguri on five counts of the offence of house breaking contrary to section 304 (1) (b) and the offence of stealing contrary to section 279 (b) of the Penal Code. On 9<sup>th</sup> March 2021 the subject pleaded guilty to all the counts. The learned trial Magistrate sentenced him to various terms of imprisonment.

3. As stated before the subject is a minor and accordingly his sentence to serve imprisonment is unlawful. It is so provided under section 190 of the children's Act which provide

***“190. Restriction on punishment***

***(1)No child shall be ordered to imprisonment or to be placed in a detention camp.***

***(2)No child shall be sentenced to death.***

4. This matter has been brought to the High Court for Revision under section 364 of the Criminal procedure Code. In that respect I requested a probation report to assist the court which I confirm I have considered.

5. Accordingly I make the following Orders:

a. The sentence by the Senior Resident Magistrate in Githunguri Criminal case NO. 234 of 2021 of the subject CKW is hereby set a side. The subject CKW shall be set free from custody.

b. The subject CKW is hereby sentence to serve one year under Probation.

**RULING DATED AND DELIVERED AT KIAMBU THIS 12<sup>TH</sup> DAY OF APRIL, 2021.**

**MARY KASANGO**

**JUDGE**