



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CRIMINAL APPLICATION NO. E54 OF 2021

E.K.M.....APPLICANT

VS.

REPUBLIC.....RESPONDENT

RULING ON REVIEW

1. By Notice of Motion application dated 3rd August, 2021, the applicant seeks revision of the orders made by Gatundu Court in **Criminal Case No. 1052 of 2021**. The applicant was charged with the offence of being in possession of alcoholic drink contrary to **Section 27(4)** of the **Alcoholic Drinks Control Act 2010**. The applicant pleaded guilty of the offence. The trial court on convicting the applicant sentenced him to a fine of Kshs.30,000/= in default 9 months. He is presently at Kiambu prison.
2. At the time of taking plea it was not brought to the attention of the trial court that the applicant was 16 years old, hence the application for Revision before this Court.
3. Because of lack of knowledge of the age of the applicant by those who arrested him and by the trial court, I am of the view that in all probability, the rights of the applicant recognized in the Children's Act were not considered. In particular, I refer to the provisions of **Section 186** of the Children's Act which provides:-

“Every child accused of having infringed any law shall:-

- (a) Be informed promptly and directly of the charges against him;***
- (b) If he is unable to obtain legal assistance, be provided by the Government with assistance in the preparation and presentation of his defence;***
- (c) Have the matter determined without delay;***
- (d) Not be compelled to give testimony or to confess guilt;***
- (e) Have free assistance of an interpreter if the child cannot understand or speak the language used;***
- (f) If found guilty, have the decisions and any measures imposed in consequence thereof reviewed by a higher court;***
- (g) Have his privacy fully respected at all the proceedings;***
- (h) If he is disabled, be given special care and be treated with the same dignity as a child with no disability.”***

4. Further, had the trial court been informed of the age of the applicant, it would have taken consideration of **Section 191** of the Children's Act while sentencing the applicant which provides:-

“(1) In spite of the provisions of any other law and subject to this Act, where a child is tried for an offence, and the court is satisfied as to his guilt, the court may deal with the case in one or more of the following ways—

- (a) By discharging the offender under Section 35(1) of the Penal Code (Cap. 63);***

- (b) By discharging the offender on his entering into a recognizance, with or without sureties;*
- (c) By making a probation order against the offender under the provisions of the Probation of Offenders Act (Cap. 64);*
- (d) By committing the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake his care;*
- (e) If the offender is above ten years and under fifteen years of age, by ordering him to be sent to a rehabilitation school suitable to his needs and attainments;*
- (f) By ordering the offender to pay a fine, compensation or costs, or any or all of them;*
- (g) in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of Borstal institutions;*
- (h) By placing the offender under the care of a qualified counsellor;*
- (i) By ordering him to be placed in an educational institution or a vocational training programme;*
- (j) By ordering him to be placed in a probation hostel under provisions of the Probation of Offenders Act (Cap. 64);*
- (k) By making a community service order; or*
- (l) In any other lawful manner.*

5. It is due to the above reasons and to ensure the best interests of the child are attained that I make the following orders:-

- (a) The conviction of the applicant in Gatundu Chief Magistrate's Court **Criminal Case No. E105 of 2021** is hereby quashed and his sentence is hereby set aside.
- (b) The applicant shall be set free unless otherwise lawfully held.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 7TH DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Applicant: Miss Nyaguto

Mr. Kasyoka for Respondent

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE