

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. E033 OF 2020

LESIT, J

VNM (suing on behalf of GOM - a minor).....1ST APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

I have considered the application by the mother of the subject argued on her behalf by Mr. Mwendwa and Mr. Wambui.

The State was represented by learned prosecution counsel Mr. Momanyi. He does not oppose the application save for prayer 5.

Prayer 5 was seeking quashing of the conviction entered by the trial court.

I agree that in order to challenge the conviction the subject ought to have filed a substantive appeal.

Turning to the application the subject was sentenced to a fine of 50000/= in default to 1 year's imprisonment. Under **section 28(2)** of the **Penal Code**, the maximum default sentence for a fine of 50000/= is six months' imprisonment. The sentence was therefore illegal.

The Applicant supplied the birth certificate showing that the subject was born in 2003. That means at the time of sentence, he was still a minor. **Section 190(1)** of the **Children Act** provides that no child shall be ordered to imprisonment or to be placed in a detention camp. The subject should not have been sentenced to a term of imprisonment in default of a fine or at all. The sentence flouted **section 190(1)** of the **Children Act** and was therefore ultra vires the law.

In the result I will set aside the sentence imposed against the subject and order his immediate release from prison unless he is otherwise lawfully withheld.

LESIT, J

JUDGE

1/10/2020