



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

PETITION NO. 01 OF 2018

(Arising from Kitale High Court Criminal Case No. 19 of 2001).

**IN THE MATTER OF ALLEGED CONVENTION OF RIGHTS OR FUNDAMENTAL
FREEDOMS UNDER ARTICLE , 20(1) (2) (4), 22(1) (4) (3) (c) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONVENTION OF RIGHTS OR
FUNDAMENTAL FREEDOM OF THE INDIVIDUAL UNDER
ARTICLE 23 (1) (3), 25(2) (b) 8(c), 27 (1) (2) (4), 28, 29, (2) (d) 8(f), 35(1) 48 & 50 (1), 165 (7)**

AND

**IN THE MATTER OF ARTICLES 258(1) & 25(1) (3) OF THE
GENERAL PROVISION OF THE NEW CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE SECTION 18, 19, 22, 189, 190 OF THE CHILDREN'S AGE

BETWEEN

NK.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The application herein is clear and straightforward. The applicant was convicted for Murder and sentenced to life Imprisonment under Presidential pleasure as provided under Section 25(2) of the Penal Code.
2. The applicant has filed this application seeking a review of the same on the sole ground that as at the time of the commission of the offence he was 16 years old. According to him the trial court should have considered this fact during sentence and proceeded to apply Section 191 of the Children's Act.
3. The application has not been opposed by the Respondent. I have perused the P3 form filled on 12/2/2001 in respect to the applicant and its indicated that he was 16 years old at that time.
4. From the Judgement of the trial court, the offence occurred on 2/2/2001 at Oramba Farm within Trans Nzoia District.
5. In its sentencing the trial court stated inter alia , that,

“ Accused 3 – NK was said to be 16 years old as at the time of the offence was committed. Accused 4 – DN was 17 years old. They cannot therefore be condemned to death.”

6. The court then went ahead to sentence Accused 3 and 4

“ to be detained in prison at the pleasure of the President.”

7. I have perused the Children Act which was Assented to on 31/12/2001 and commenced on 1/03/2002. It appears then that the Provisions of the Children Act applied squarely in matters sentencing. Section 190 and 191 thereof provides the mode of Sentencing which does not include long confinement or death sentence.

8. In view of the above provisions, I find that there was error in sentencing the same was not in line with the provision of the Children's Act. There was no doubt that the Applicant was 16 years as clearly found by the trial court.

9. Section 18 of the Children Act provides that no Child should be subjected to life imprisonment. The Applicant's detention under the Presidents pleasure is technically life imprisonment which is prohibited.

10. Without going into the other Provisions of the Constitution cited by the applicant I find the application meritorious. The same is allowed. The years served by the applicant in prison are to say the least sufficient for him to have learned a lesson not to engage further in any criminal tendencies.

11. He is hereby set free unless lawfully held.

Delivered, signed and dated at Kitale this 9th day of April, 2019.

H.K. CHEMITEI

JUDGE

9/4/19

In the presence of:

Mr Omoria for the Respondent

Applicant – present

Court Assistant – Kirong

Judgement read in open court.