

REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PETITION NO. 1 OF 2015

BETWEEN

**T A A (Suing as mother and next
friend of I M O) PETITIONER**

AND

ATTORNEY GENERAL1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

JUDGMENT

1. The petition lodged in this Court is by T A A who is the mother of I M O (“the child”). It is not disputed that the child was charged with the offence of escape from lawful custody contrary to **section 123** as read with **section 36** of the *Penal Code (Chapter 63 of the Laws of Kenya)* at the Chief Magistrates Court at Oyugis (*Criminal Case No. 23 of 2015*). He pleaded guilty and was sentenced to serve 18 months imprisonment.

2. The gravamen of this petition is that as a child, he ought not to have been sentenced to imprisonment. Mr. Oluoch, learned counsel for the Director of Public Prosecutions, concedes that the birth certificate shows that he was born on 2nd March 1998 which confirms that he is below the age of 18 years. He therefore falls under the definition of a child under **section 2** of the *Children Act (Chapter 141 of the Laws of Kenya)*.

3. In the circumstances the order that commends itself to this Court is that the child shall be removed from prison custody forthwith and placed in a Borstal Institution for the time of his minority in accordance with the provisions of **section 191(1)(a)** of the *Children Act*.

DATED and DELIVERED at MIGORI this 9th day of April 2015.

D.S. MAJANJA

JUDGE

Ms Ashioya instructed by Oduk and Company Advocates for the petitioner.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Director of Public Prosecutions for the 2nd respondent.