

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA,
HOLDEN AT KAMPALA,
CRIMINAL DIVISION.**

HCT-00-CR-SC-0294-2020

UGANDA=====PROSECUTOR

VERSUS

1. A1 T A

2. A2 OB =====JUVENILE OFFENDERS.

BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JHC.

ORDERS OF COURT.

TA and OB were indicted for aggravated robbery contrary to **sections 285 and 286(2) of the Penal code Act** laws of Uganda where it was alleged that they robbed a one Matovu John Vianney of his bag of books, two mobile phones, and cash to a tune of 375,000/= Ugandan currency on the 4th day of October 2019. They were charged with another K. A who was stated to be a juvenile of 16 years.

TA and OB were stated to be 19 years. The lower record indicates that KA was in the remand home but he never appeared before Court.

The two herein whose age was put at 19 years were first remanded in an adult prison on 7/1/2020 and thereafter committed for trial on 7/3/2020.

When they were arraigned before the High Court for trial on 20/3/2023, it was established that they were actually below 18 years at the time they committed the offence, they were therefore juvenile offenders.

This was during mitigation when court was informed that at that time, they were pupils at Kiswa Primary school.

At the time of hearing their case when they pleaded guilty to the indictment, they had spent three years, two months and 13 days in an adult prison.

Three years and more in Prison, none of the two had developed beards as yet. They were 16 years old then. They still looked youthful and court just imagined how young they had looked three years ago.

This case is a classic example of so many other cases where the age of the offender is enhanced to cause juvenile offenders to be remanded in an adult prison which is in total violation of their constitutional rights and a breach of the provisions of the Children Act cap 59 and its amendment.

The preamble to the Children Act is that ;- **it is an Act to reform and consolidate the law relating to children: to provide for care, protection, and maintenance of children ,to provide for local authority support for children: to establish a family and Children court; to make provision for children charged with offences and for other connected purposes.**

Needless to say, the above purpose of the law is to be implemented by all the stakeholders involved in the administration of justice regardless of whether the child is the victim or suspect of crime.

The Children Act defines a child to be a person below the age of eighteen years (**section 2 of the Children Act**) and both the Constitution and the Children Act which was passed to give full effect of the Constitutional provisions prohibit keeping a child offender in lawful custody with adults.

Article 34(6) clearly provides that **"A child offender who is kept in law ful custody or detention shall be kept separately from adult offenders"**.

This constitutional right is reemphasized under **section 89(8) of the Children Act** which provides in Mandatory terms that: **"No child shall be detained with an adult person"**.

This applies to any child under lawful detention regardless of the seriousness of the offence.

The law goes ahead to regulate the period a child can spend on remand under **section 91 of the Children Act** as amended in 2016.

Section 91 (5) (a) provides for a remand period of three months for an offence punishable by death much as the maximum for juvenile offenders is three years imprisonment and 45 days for a minor offence.

The law further provides for duration of criminal cases for juvenile offenders.

Section 99 of The Children Act provides that:

- 1) *"Every case shall be handled expeditiously and without unnecessary delay.*
- 2) *.....*
- 3) *Where, owing to its seriousness, a case is heard by a court superior to the family and Children court, the maximum period of remand for a child shall be six months, after which the child shall be released on bail.*
- 4) *Where a case to which subsection (3) applies is not completed within 12 months after the plea has been taken, the child shall be discharged and shall not be liable to any further proceeding for the same offence".*

This court however has noticed the contradiction between the provision in section 99 (3) and section 20 of the Children Amendment Act 2016 which amended section 91 particularly in respect of the remand period of children charged with serious offences triable by the High Court.

If this court is to apply the general principles of statutory interpretation using the principle of intentionalism, the intention of the amendment was to reduce the period on remand in cases of a capital nature to three months and non-capital nature to 45 days.

Section 99(3) of the Children Act is therefore in contradiction with the amendment which this court treats as an oversight of the legislatures.

The maximum statutory period on remand for juveniles charged with capital offences is three months as that was the intention of the amendment.

All the above show that a child offender must be treated within the provisions of the law.

This case shows that the accused person's rights were violated right from the time they were arrested.

The police that first arrested them, did not bother to examine them.

The medical officer who examined them lied about their age.

This presumption is he merely filled the form and stated their age to be 19 years.

The State Attorney who arraigned them before the court for reading and explaining the charge never bothered about their looks.

The magistrate before whom they first appeared did not read all the particulars of the charge sheet including the age to them.

It is very important to read the age that has been stated on the charge sheet especially where the suspects appear to be young.

They would have informed court that they were below 18.

It is a common practice where the suspects are warned that they need not say anything because the court lacks jurisdiction.

The juvenile offenders keep quiet and find themselves in adult prisons.

All stake holders in the criminal justice system are expected to support children who are alleged to be in conflict with law.

The prisons officers are not obliged to admit juveniles in the adult prison and where the first stake holders have made errors, Prisons authorities have a duty to inform court that the offender is juvenile.

The two accused persons ended up in an adult prison for more than three years far and above the maximum sentence for juvenile offenders.

Their trial was conducted in open court because they had matured from the adult prison.

The right to have their case concluded within 12 months was also violated and no probation and social welfare officer was involved to assess and evaluate their conditions and establish why they involved themselves in crime.

This is a case where all officers of court failed the juvenile offenders and breached all the principles and laws pertaining to juvenile justice.

They acted in breach hiding behind the enhanced age thereby occasioning a grave injustice to the young offenders.

The duty of a magistrate who is the first judicial officer to interface with an accused person in a capital offence or any other offence is to arbitrate, advise, adjudicate, and administer justice in a court of law.

Failure of a magistrate to detect the lies of the prosecution about the age of a juvenile offender at the first appearance in court is breach of his judicial duty of administering justice.

Juveniles who commit crime seem to be at the mercy of the prosecution.

In view of the absurd circumstances in this case, where juvenile offenders were remanded in an adult prison for more than three years, and in the interest of justice for children, the magistrates courts before whom suspects are produced should, where a suspect appears to be young adopt the following guidelines while reading and explaining the charges.

- 1) Read the names and particulars of the suspect including the stated age, work, and place of residence.**
- 2) Explain to the suspect to respond to the information given about him in regard to his age, work and residence.**
- 3) Record his or her response in regard to his age, and other particulars such as names of the parents or guardians if they claim to be below 18 years.**
- 4) Read and explain the charge as has been the case.**
- 5) If he or she disputes the age and claims to be below 18 years and in court's opinion he or she appears to be below 18 years, remand the suspects in a children's remand home if necessary and order for another medical examination or release the suspect on bond where necessary.**
- 6) In case the report confirms that the offender is a juvenile, cause the state Attorney to write to the first examining medical officer to show cause why they should not be charged with giving false information to police.**

This procedure would reverse the increasing trend where the police and the medical officers deliberately enhance the age of juvenile offenders just because they want them to be treated as adults and detained in adult prisons which is a violation of their constitutional rights.

In case court has failed to discharge its duty judiciously, then the prisons Authorities should be the last line of hope for the juvenile offender.

To the best of my knowledge all prisons have medical personnel attached to the sick bay. Any new remand prisoner who appears to be young should be examined properly by the medical or clinical officers using dentition, physical features like beards, pubic and armpit hair, and general bodily changes that can guide as to whether the offender is a juvenile or adult.

Where it is discovered that he or she is a juvenile arrangements should be made to return the child to the court the following day or earliest date if it is over the weekend to change the remand warrant.

It is very unfortunate that juvenile offenders are found in adult prisons in total violation of their constitutional rights.

All stake holders in the criminal justice system are expected to apply the laws pertaining to children as they are without perverting justice because the procedure and language used is supposed to be child friendly.

Any person who contravenes any of the provisions of the children Act commits an offence and is liable to pay a fine of one hundred thousand shillings or to imprisonment for a period of six months or both. Section 109 of the Children Act refers. This shows how serious it is to violate the statutory provisions of the Children like remanding them in adult prisons because the Children Act brings into effect the Constitutional provisions pertaining to Children.

In view of the above and having been satisfied that the accused persons were juveniles at the time the offence was committed, and they have been in custody for more than three years in an adult prison, it is directed that they serve the sentence of three years, which sentence is already served. They should be released immediately unless held over other lawful charges.

Dated at Kampala this 22nd day of March 2023.



Hon Lady Justice Margaret Mutonyi.

Criminal Division.