

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON THURSDAY, THE 5TH DAY OF JANUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACKEY AND VIDA DANQUAH AS PANEL MEMBERS

SUIT NO.

R16/12/23

THE REPUBLIC

VS

MOHAMMED JONATHAN

Juvenile present with father

Chief Inspector Simon Tekpor with Det. Corporal Judith Nutsuakor for the Republic

Komivi Dzotsi Esq. for Hamdiya Mohammed Esq. for Martin Kpebu Esq. for the Juvenile

SENTENCE

The Juvenile herein was arraigned with an adult before the Kaneshie District Court '2' Accra with Her Worship A. Adomako-Kwakye sitting as the Judge. The Juvenile, aged Sixteen (16) years was subsequently convicted on his own plea of guilt. Upon conviction, the Court, pursuant to Section 18 of the Juvenile Justice Act, 2003 (Act 653) remitted the Juvenile to the Juvenile Court for Sentencing.

BRIEF FACTS:

On the 16th of November 2022, the Juvenile and another were put before the court on the following charges;

- i. Count One: Stealing contrary to Section 124 (1) of The Criminal and Other Offences Act, 1960 (Act 29).
- ii. Count Two: Dishonestly receiving contrary to Section 146 of the Criminal and Other Offences Act, 1960(Act 29).

The Juvenile pleaded guilty to Count One and was convicted on his own plea of guilt, hence his remittance to this instant court for sentencing.

Sentencing

In sentencing the Juvenile, the Juvenile Court is guided by Section 24(1) of the Juvenile Justice Act, 2003 (Act 653) which provides, among others, that “*where a Juvenile is charged with an offence, the Juvenile Court shall order a Social Enquiry Report (SER) to be submitted to the Court which shall be taken into account in making an Order*”. The Probation Officer, Mr. Richard Tegbey, conducted the investigation and presented the SER to Court. The SER revealed the nature of the offence, the character, antecedents and home surroundings of this Juveniles as well as the circumstances that led to offence being committed.

The Social Enquiry Report (SER)

The SER revealed that the Juvenile was born in Accra but was taken to Bolgatanga when he was Ten (10) years old. He dropped out of school upon advancing to Junior High School Two but stayed in Bolga for some years before coming to Accra in 2021 to look for greener pastures. The SER indeed discovered that the Juvenile lives on the streets of Accra and fends for himself. The Juvenile informed the Probation Officer that he deals in scraps but he was indulging in social vices and has been arrested by the Police on Three (3) different occasions.

The Probation Officer indicated that this is the first time the Juvenile has appeared before the court but stated further that the Juvenile does not have a fixed place of abode and is not under any form of parental control. The Probation Officer however observed that it is either the Juvenile refused to find information about his family or he does not know to the extent that he claims he does not know his father's name nor his whereabouts.

The Probation Officer, who at best is an Independent Investigator and has the duty to make certain recommendations without losing cognizance of the best interest of the child stated that since the Juvenile does not have a fixed place of abode and not under any form of parental control, releasing the Juvenile on Probation should not be an option as the Juvenile is likely to abuse the Probation Order. The Probation Officer suggest to the Court that the Juvenile undergoes character and vocational training in a correctional center. He further recommended that the Juvenile is committed into the Senior Correctional Centre for a period of Three (3) years. However, in spite of the recommendation of the Probation Officer, it is the duty of the court to consider the effect the sentence is likely to have on the child or young person.

Mitigation

Counsel for the Juvenile prayed the court consider committing the Juvenile into the care of a fit person and further prayed to give him a chance to attempt reaching the parents of the Juvenile. Counsel's prayer was granted and on the next adjourned date, he produced both the Juvenile's father and his uncle who assured the court of living up to their responsibilities as far as the Juvenile is concerned so as to deter him from committing future offences.

Analysis

It is obvious from the contents of the SER that this is a Juvenile that needs reformation and such reformation must be over a period of time. This is because, the juvenile herein, at such a tender age of 16 years has been exposed to various types and forms of delinquent behaviors as well as social vices that consequently resulted in the commission of the criminal offence. It is obvious that it will in the best interest of the child that he be detained at a Correctional Centre for reformation. *'Section 46 (1) of Act 653, however, provides that where a juvenile or young offender is ordered to be sent to a Centre, the detention order shall be the authority for the detention and the period shall not exceed*

- a) three months for a juvenile offender under the age of sixteen years;*
- b) six months for a juvenile offender of or above sixteen years but under eighteen years;*
- c) twenty-four months for a young offender of or above the age of eighteen years;*
or
- d) three years for a serious offence'.*

Clearly, the Juvenile herein is a Juvenile Offender as defined in Section 60 of Act 653 as *'a juvenile who has been convicted of an offence for which the court may impose a sentence of imprisonment for one month or upward without the option of a fine'* and the period of detention should have been *Three (3) months per Section 46(1)(a)* or a maximum of *Six (6) months per Section 46(1)(b)*. However, the Probation Officer recommends a period of *Three (3) years* detention per Section 46(1)(d) which is a period reserved for serious offences. It must be stated that Section 46(8) states that *'the following offences are considered to be serious offences (a) murder; (b) rape; (c)*

defilement; (d) indecent assault involving unlawful harm; (e) robbery with aggravated circumstance (f) drug offences; and (g) offences related to firearms’.

It must be repeated and emphasized that the Juvenile herein has been convicted of the offence of Stealing contrary to Section 124(1) of Act 29. Clearly, the offence the Juvenile has been convicted of is not considered as a Serious Offences and as such the detention of the Juvenile herein should not be for the period reserved for Serious Offences although the Probation Officer recommends that the Juvenile be detained at the Senior Correctional Centre. Section 46(2) however states that *‘a juvenile offender under the age of eighteen years shall be detained in a Junior Correctional Centre’*. Section 46(3) also provides that *‘a young offender above the age of eighteen years shall be detained in a Senior Correctional Centre’*. Section 46(4) further states that *‘a juvenile offender under the age of fifteen years who has been convicted of a serious offence shall be detained in a Senior Correctional Centre’*. Yet, it has been recommended that the court detains the Juvenile, who is about 16 years old for a period of Three (3) years at the Senior Correctional Centre for an offence which is not considered as a Serious Offence.

As prayed, Counsel for the Juvenile was able to produce the relatives of the Juvenile on the day set for sentencing and the Juvenile’s father assured the court of his eagerness to live up to his responsibilities as a father henceforth. He informed the court that the Juvenile has expressed his desire to learn a vocation and he is willing to assist the Juvenile to reform.

The offence for which the Juvenile has been convicted does not warrant a custodial sentence. The Probation Officer however recommended that a custodial sentence be imposed and the reasons for doing so was because the Juvenile was unable to produce any of his relatives and recommending any other form of sentence will mean the Juvenile going back to the street and is likely to commit

other offences. In view of the presence of the Juvenile's father and uncle, the submissions of counsel as well as the offence committed by the Juvenile, the court shall not depart from the recommendation of the Probation Officer.

SENTENCE:

Pursuant to Sections 29 and 31 of the Juvenile Justice Act, 2003 (Act 653), the Juvenile is sentenced as follows;

1. The Juvenile is hereby released on Probation to his father for a period of One (1) year.
2. The Juvenile's father is hereby ordered to give security for the good behavior of the Juvenile.

.....
H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
PRESIDING JUDGE

I AGREE

I AGREE

.....
MADAM PHILOMENA SACKEY
DANQUAH
PANEL MEMBER

.....
MADAM VIDA
PANEL MEMBER