**Nyachuma v Republic**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of judgment:** 26 March 2004

**Case Number:** 257/03

**Before:** Omolo, Githinji JJA and Onyango Otieno AJA

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**Summarised by:** C Kanjama

*[1] Children – Trial court – Jurisdiction of High Court – Whether High Court has jurisdiction to try*

*child for non-capital offence – Section 60(1) – Constitution of Kenya – Section 185(1) – Children’s Act.*

*[2] Criminal procedure – Plea – Taking of plea – Infant took plea of “charge is true” – Contradictions*

*in particulars of charge regarding date of offence – Whether irregularity in plea and reading particulars*

*rendered conviction a nullity.*

*[3] Criminal procedure – Sentence – Accused infant convicted of manslaughter on his own plea –*

*Sentenced to detention at President’s pleasure – Whether sentence justified in light of conviction for*

*manslaughter – Section 202 Penal Code – Section 191(1) – Children’s Act.*

**Editor’s Summary**

The Appellant, a 16-year-old, was charged with the offence of murder in the High Court. He pleaded “charge is true” to a lesser charge of manslaughter. The plea was recorded and the particulars of the offence were read. He admitted the particulars, although there were material contradictions therein as to the date when the offence actually took place. After mitigation, he was sentenced to detention at the President’s pleasure. The Appellant appealed claiming that the plea taking was irregular, and that the contradictions in the particulars of the charge rendered the conviction a nullity. It was also contended that the High Court lacked jurisdiction to deal with the offence as the proper venue of the trial was the Magistrate’s Court. In the alternative, the Appellant attacked the sentence, claiming that it was wrongly given on the assumption that the accused had been convicted of a capital offence. On appeal.

**Held** –The accused was represented by counsel, and his plea was unequivocal. He did not have a defence to the charge. Hence, the irregularities in taking of the plea and the contradictions in the particulars were irregularities in form and not in substance. They were curable under section 382 of the Criminal Procedure Code (*Adan v Republic* [1973] EA 445 applied). The High Court has constitutional unlimited original jurisdiction in all civil and criminal matters. Its jurisdiction could not be held to have been ousted by any Act of Parliament. The sentence of detention at the President’s pleasure could only have been pronounced where the accused was a child offender who had been convicted of a capital offence. As the accused in this case had not been convicted of murder, the sentence was erroneous. The Court of Appeal would be guided by the sentencing provisions of the Children’s Act in determining the proper sentence for the accused.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Adan v Republic* [1973] EA 445 – **AP**