

IN THE HIGH COURT OF LESOTHO

In the matter of:

‘MALEFU MOLAPO

Order on Review

Detention of Children in Need of Care.

It has been brought to my attention by the department of Prisons and Rehabilitation that there are some Magistrate Courts which send “Children in need of care” to the Juvenile Training Centre (J.T.C.) And the Female Prison. These children have not committed any criminal offences. J.T.C. and Female Prison are detention centres for children who have committed criminal offences.

Section 26 (1) of the Children’s Protection Act 1980 provides that “No child shall be punished by imprisonment”. Although these children have not been convicted and sentenced by a court of law, their detention in prison for long periods amounts to punishment by imprisonment.

It is correct that under section 9 of the Children’s Protection Act 1980 the children’s court has the power to deal with children in need of care. Every Subordinate Court is a children’s court in terms of the provisions of section 5 of the Children Protection Act 1980 (the Act).

Section 9 of the Act must be read with section 10 of the Act because it is the latter that tells the court how to deal with the children in need of care.

Section 10 (1) reads as follows:

- “(1) If a children’s court is satisfied that a child brought before it under section 9 is a child in need of care, the court may -
- (a) order that the child be returned to or remain in the custody of his parent or guardian or of the person in whose custody he was immediately before the commencement of the proceedings;
 - (b) order that the child be placed in the custody of a foster parent for a period not exceeding 2 years;
 - (c) order that the child be sent to an approved school for a period not exceeding 2 years;
 - (d) order that the child be placed under the care of an approved society;
 - (e) recommend that the child be placed in adoption.”

In terms of section 27 of the Act the Minister may designate approved schools for the reception, maintenance and training of children. As far as I am aware the Minister has not yet designated any approved schools.

Prisons have not been designated as approved schools for children in need of care. It is therefore unlawful for the children’s courts to make orders of detention of children in prisons. Magistrates must make lawful orders under section 10 of the Act.

Some Magistrates are under the wrong impression that a prison is “a place of safety”. “A place of safety” is defined as any institution, foster home, police station, hospital or any other suitable place the occupier of which is willing temporarily to receive a child. A prison is not included in the above definition of a place of safety. It is obviously not such a place because it is a place for convicted criminals or people awaiting trials of their criminal charges. A child in need of care is not a criminal and very often he or she is not facing any criminal charge.

It is wrong to send a child in need of care to prison. He or she is likely to meet with hardened criminals who may abuse or corrupt him or her in various ways.

It is also clear that prison authorities are unwilling to keep such children. They have no proper infrastructure and properly trained officers for the care and training of children in need of care.

A children’s court is a creature of statute and must work in accordance with the statute that has created it. It is very clear that the children’s courts are not working in accordance with the Act.

All the orders of detention of children in need of care in prisons are all null and void. The order of this Court is that they must be released and be dealt with in terms of section 10 of the Act. They must be handed over to the people in whose custody they were before the detention orders were made.


J.L. KHEOLA
CHIEF JUSTICE

CC: Magistrate - Maseru
O/C Police - Maseru
O/C Prison - Maseru
CID Headquarters - Maseru
Director of Prisons
Director of Public Prosecutions
Chief Magistrate
All Magistrates