

KINDS OF PUNISHMENT OR SENTENCES AVAILABLE TO THE DISTRICT  
AND CIRCUIT COURTS – BY JUSTICE J.B.AKAMBA.

The type of punishment and sentences open to the District courts and Circuit courts are provided under the Criminal procedure Code 1960 Act 30. Part six (6) of Act 30 section 294 lists different kinds of punishment open to the courts. For the purpose of the District and Circuit courts the relevant modes of punishment are:

- (a) Imprisonment,
- (b) Fines,
- (c) Probation,
- (d) Discharge – absolute or conditional,
- (e) Bonding over to keep the peace or to be of good behavior,
- (f) Detention.
- (g) Costs
- (h) Deportation

A person convicted by the court may be penalized by any one or a combination of two or more of these modes of punishment as deemed appropriate by the court. As regards the severity or period of each one of the punishments to be imposed, these are guided among other things by the jurisdiction of the court undertaking the exercise.

a. IMPRISONMENT.

Various statutes under our law prescribe imprisonment as the mode of punishment for infringement of the provisions. The period of imprisonment varies according to the offence and as provided by the section dealing with punishment for that offence. Offences are generally categorized into misdemeanors and felonies. As to what constitutes a felony of the 1<sup>st</sup> or 2<sup>nd</sup> degree, this has to be construed according to section 296 of Act 30. It is important to be guided by the provisions of s.296 of Act 29 so as to avoid any mistake of relying on the ancient definition of the two

words. This is so because the dictionary meaning of a misdemeanor being a crime that is not considered to be serious and a felony as one that is serious may mislead one into believing that sentences are necessarily guided by those descriptions or distinctions. A few examples from the Criminal Procedure Code will highlight the point:

Negligently causing harm under S.72 of Act 29 is stated as a misdemeanor.

S. 73 – Dangerous thing, negligently causing harm or danger is a misdemeanor.

S. 74 – Threat of harm is a misdemeanor.

S. 75 – Threat of death is a 2<sup>nd</sup> degree Felony.

S. 69 – Intentionally and unlawfully causing harm is a 2<sup>nd</sup> degree felony.

S. 84 – Assault is a misdemeanor

S. 88A – Cruel Practices in relation to bereaved spouses is a misdemeanor

S. 89 – Kidnapping is a 2<sup>nd</sup> degree felony

S. 91 – Abduction of child under eighteen (18) is a misdemeanor

S. 93 – Child Stealing is a 2<sup>nd</sup> degree felony

S. 97 – Rape is a 1<sup>st</sup> degree felony and the offender is liable to imprisonment of not less than five (5) and not more than twenty five (25) years.

S.101 – Defilement of child under sixteen (16) years of age – A person who naturally or unnaturally carnally knows a child under sixteen (16) years of age whether with or without the consent of the child, commits a criminal offence and is liable on summary conviction to a term of imprisonment of not less than seven (7) years and not more than twenty five (25) years.

S.103 – Indecent assault is a misdemeanor and liable to imprisonment not less than six (6) months.

Act 30 (2) – An offence under any other enactment shall, subject to that enactment, be enquired into, tried and dealt with in accordance with this Act. In view of the just quoted provision, where a statute other than Act 29, specifically provides a

penalty for an offence, it is that provision that would apply and not the general provisions in s 296 of Act 30. It is in this light that statutes such as the Medical and Dental Act, 1972 [section 41], the Minerals and Mining Act, 1986,[section 82] and the Narcotic Drugs Act, 1990 which specifically provide penalties for their breaches take precedence.

The courts that impose sentences of imprisonment are guided by their own jurisdictional limitations. For instance District Courts shall not impose a term of imprisonment exceeding two years – See Courts Act 1993 (Act 459) s. 48 (2).

The Circuit Court also has original jurisdiction in criminal matters other than treason, offences triable on indictment and offences punishable by death. –See s. 43 of Act 459.

It is equally important to note that under s 314 of Act 30 a court shall not impose a sentence of imprisonment on a person who is under the age of [15] fifteen years, or in the case of the District Court, under the age of seventeen [17] years.

#### b. FINES.

Fines are usually set out by the statute creating the offence. The court is also guided by its jurisdictional limits as to fines set out in Act 459 the Courts Act. For instance under s48 (2) of the Act a District Court shall not impose a fine exceeding five hundred penalty units.

It is not proper to order that part of a fine be paid as compensation to any one since the fine is a statutory provision and upon its payment it goes into the consolidated funds of the state – See article 160 of the Constitution 1992.

There is provision enabling the court to give the offender time within which to pay the fine. See s 318 (3) and (4) of Act 30. See also s 297 (3) of Act 30.

Fines may be imposed in such manner that a failure to pay same should result in an imprisonment. See s. 297 (3) of Act 30. This imprisonment is in addition to any other imprisonment to which that person is sentenced, and in the case of a felony or misdemeanor shall not exceed 3 years and in any other case shall not exceed 12 months.

Section 297 of Act 30 provides general rules to guide fines.

Section 296 on the other hand provides general rules for punishment.

Section 318 provides for the suspension of execution of sentence of imprisonment for a period not exceeding 15 days for the payment of the fine.

Fines are now awarded in penalty units which is regulated by the Fines (Penalty Units) Act 2000 (Act 572) under which all fines are now awarded in penalty units.

There is provision under the Act to cater for conversions of fines in enactments that were in force before this Act.

### c. PROBATION

Probation is a system whereby a person who has committed a crime would not be sent to prison if he/she would behave well and report regularly to a probation officer within a specified time. Under section 354 of Act 30 a court has power to make probation orders where a person is convicted of an offence and there exists such extenuating circumstances like the youth, character, antecedents, home surroundings, health, or mental conditions of the offender or the nature of the offence etc as to warrant imprisonment or fine may place such offender under the supervision of a probation officer.

Probation orders are for a minimum period of six (6) months and a maximum of three (3) years. It is usually made in respect of juvenile convicts below seventeen (17) years. It may also be extended to convicts above seventeen provided the convict expresses willingness to comply with the provisions of the probation order- See section 354 (3) of Act 30.

d. ABSOLUTE OR CONDITIONAL DISCHARGE: s 353 of ACT 30

The court has power to grant an absolute or conditional discharge under section 353 in an offence whose sentence is not fixed by law and having regard to the nature of the offence or the character of the offender.

e. RECOGNIZANCE FOR KEEPING THE PEACE OR TO BE OF GOOD BEHAVIOUR: ACT 30 S 22- 31 AND 299.

A district court may bond over a person to be of good behavior or keep the peace for suspected persons under circumstances listed in section 23 to 31 of Act 30.

f. DETENTION.

Detention in a Junior Correctional School or a Senior Correctional School may be made by a Juvenile Court pursuant to section 375 of Act 30. The court must first be satisfied that such an order is expedient having regard to the criminal habits or tendencies of the convict or his association with persons of questionable character.

g. COST.

Section 141 of Act 30 makes provision for the award of compensations in criminal proceedings. Under this provision the court may award reasonable compensation

against the complainant in favour of an accused person who has been discharged or acquitted if the court is of the opinion that the charge was frivolous or vexatious. Such compensation shall not exceed the equivalence of five penalty units. This provision does not apply to Police officers acting bona fide in the course of official duties.

h. DEPORTATION.

This mode of punishment or sentence is invoked when an alien has been convicted of a criminal offence and sentenced to imprisonment over three months with or without a fine and the sentencing officer recommends to the appropriate authority for his deportation under the Aliens (Amendment) Decree, 1974 (NRCD 259).

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### Some Exercises on Punishment and Sentencing

1. An accused is convicted of two misdemeanours. Can you sentence the accused to a jail term in excess of one year?
2. The accused is convicted of a misdemeanor. You are convinced that the defendant needs to serve some time in jail, but you are concerned that if you send him to jail he will lose his job, which supports his wife and two young children. What issues would you consider before passing sentence?
3. An accused person is charged with larceny, a petty misdemeanor. She claims she is indigent. Do you need to make a determination of whether the defendant is indigent if you don't intend to impose a jail term?
4. The accused has been convicted of a misdemeanor for the second time. She was not represented by counsel in the first conviction, and was sent to jail. Can you sentence the accused to jail time as a second offender?