

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL REVISION NO.4 OF 2020

SOLOMON MWIHUGI MUTHONI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Criminal revision from the original conviction and sentence in criminal case No. 59 of 2020 of the Chief Magistrates Court at Nyeri)

JUDGMENT

Solomon Mwihugi Muthoni aged 17 was charged in the magistrate's court with the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code, Cap 63. He faced an alternative charge of handling stolen goods contrary to Section 322(1) (2) of the Penal Code. The trial court convicted him of the main charge and ordered that he be committed to Shimo la Tewa Borstal Institution for a period of one year.

Vide a letter dated 24th January 2020, by the Honorable Senior Resident Magistrate, Hon. Nelly Kariuki, who presided over the trial, forwarded the record to this honourable court for revision of the sentence.

The basis for revision is that the mandatory period for committal to a borstal institution in accordance with Section 6(1) of the Borstal Institutions Act, Cap 92 is three years and not the one year meted out against the accused. This section reads:

6. Committal of youthful offender to borstal institution

(1) Where the High Court or a subordinate court of the first class or a juvenile court is satisfied, after considering the matters specified in section 5 of this Act, that it is expedient for his reformation that a youthful offender should undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, direct that the offender be sent to a borstal institution for a period of three years.

By the powers conferred to this court under Section 364 of the Criminal Procedure Code, Cap 75, the order to commit the applicant herein is thus reviewed and set aside and, in its place, substituted with an order committing him to the borstal institution for a period of three years. It is so ordered.

Dated and signed this 28th January, 2020

Ngaah Jairus

JUDGE