



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL REVISION NO. 22 OF 2013**

**DAVID KARANJA KAIGAI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. This Revision application originated by way of a letter written to the High Court by the Officer in-charge of Kamiti Main Prison on 2<sup>nd</sup> April 2013 because he suspected the applicant to be a minor.
2. When the matter first came up for mention on 16<sup>th</sup> April 2013 the Applicant was not produced, in court and neither was he produced on 22<sup>nd</sup> April 2013 during the next mention.
3. The matter next came up before the court on 26<sup>th</sup> September 2013 whereupon the Applicant told the court that he was aged 16 years. An order was made for him to be subjected to medical examination to ascertain his age and for the medical report to be filed in court.
4. A medical report was filed in court dated 10<sup>th</sup> September 2013 indicating that he had already had his age assessed at the time of being brought to court. In the opinion of the doctor who examined him, the applicant is aged between 16-17 years which confirms his own averments.
5. That being the case then, it is evident that the learned trial magistrate misdirected himself by failing to apply the provisions of **Section 8(7) of the Sexual Offences Act No. 3 of 2006**. The aforesaid section provides that:

**“Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act and the Children’s Act.”**

The Applicant herein was sentenced as an adult. I therefore order for a comprehensive probation report to be furnished before this court with appropriate recommendations in view of his age bracket, for purposes of reviewing the sentence imposed upon him by the trial court.

**SIGNED DATED and DELIVERED in open court this 11<sup>th</sup> day of November 2013.**

**L. A. ACHODE**

**JUDGE**