



**Republic v DOO (Criminal Revision E076 of 2025)  
[2025] KEHC 10747 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10747 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL REVISION E076 OF 2025  
PN GICHOHI, J  
JULY 22, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DOO ..... RESPONDENT**

**RULING**

1. The brief background of this Revision Application dated 19<sup>th</sup> June 2025 and filed on 18<sup>th</sup> June 2025, is that the accused herein who was then a minor, had been arraigned before the Resident Magistrate Juvenile Court at Siaya in JE546 of 2024 on 20<sup>th</sup> November 2024 for the offence of breaking into a building (shop) contrary to section 306 (a) of the Penal Code. He was committed to serve three (3) years custodial sentence at Shikusa Borstal Institution.
2. Later, it transpired that he had another case being Nakuru Chief Magistrates Court Criminal Case E0438 of 2024 where he had been charged with the offence of Kidnapping contrary to section 257 of the Penal Code.
3. When the charge was read to him, he told the trial court that he was 17 years old upon which the plea was deferred for him to avail his birth certificate which he said was at home and that his parents were aware of his arrest.
4. The birth certificate availed to Prosecution revealed that the accused was born on 4<sup>th</sup> December, 2006 and therefore the plea was taken on 29<sup>th</sup> February 2024 and he denied the charge. He was remanded at Nakuru Juvenile Remand to await a pre- bail report.
5. The matter was mentioned severally but the report was not availed prompting the trial court on 18<sup>th</sup> March 2024 to fix the matter for hearing 28<sup>th</sup> March 2024. However, on the same day 18<sup>th</sup> March 2024, the Prosecution informed that court that the accused had disappeared.



6. The hearing date was maintained, a warrant of arrest issued and summons issued to the Investigating Officer to produce him.
7. On 25<sup>th</sup> March 2024, he was arraigned before the trial court where the prosecution indicated that the accused was arrested at his house while on bond.
8. The trial court promptly made the following orders:-

“Accused person was arrested from home after escaping from custody. Accused to remain in custody until the matter is heard and determined. Accused person to be remanded at a Nakuru juvenile . Hearing on 28/3/2024.”
9. The record further shows that his counsel indicated on 28<sup>th</sup> March 2024 that the accused wished to change plea and after the facts were led to him and he admitted the facts, he changed his position, denying the charge and therefore, he was released on bond of KShs. 200,000/- with a surety of similar amount or cash bail of KShs. 100,000/= for hearing on 15<sup>th</sup> May 2024.
10. On 22<sup>nd</sup> May 2024, the Prosecution intimated to the trial court that the Accused had escaped from custody. A warrant of arrest was issued. Ultimately , the Accused’s mother attended court on 11<sup>th</sup> November 2024 and informed the trial court that the Accused had been arrested in Siaya.
11. Finally , the accused was traced at Shikusa Borstal Institution in Siaya where he was serving the custodial sentence in JE546 of 2024 (*supra*). The trial court directed that the Accused be produced in court on 9/12/2024. He was dully produced and he admitted having escaped . He was ordered not to be released from Shikusa but on 17<sup>th</sup> February 2025, the Prosecution prayed that the Accused be transferred to Nakuru GK Remand whereupon the trial court made the orders:-

“Accused person who is serving a sentence at Shikusa to be transferred to Nakuru GK. Remand , on basis of the matter in Court.”
12. It is this decision that prompted this Revision. During the hearing of this Revision on 9<sup>th</sup> July 2025, Mr. Kihara for the Applicant explained that he consulted one Elizabeth Kwamboka, Probation Officer who informed him that she had consulted her seniors in Nairobi but they equally did not know what to do with the accused person herein as he has already attained the 18 years yet he has not completed his sentence at Borstal Institution. He therefore urged this Court to make a ruling on the issue.
13. The Accused person was present and confirmed his date of birth but prayed that he be allowed to complete his KCSE studies at Shikusa Borstal Institution as there are no facilities at Nakuru GK Remand to enable him continue with the studies.

### **Determination**

14. After considering this revision , the submissions by both the Applicant and the Respondent (Accused) and the lower court record , the issue for determination is whether the trial Court had powers to order the Accused to be remanded to Nakuru GK remand while he was serving the sentence at Shikusa Borstal Institution.
15. It is noted that indeed the Accused person’s birth Certificate shows that he was born on 4<sup>th</sup> December 2006. That means that by the time he was committed to serve the 3 years sentence at Shikusa, he



was about 17 years old, hence a youthful offender within the definition under Section 2 of Borstal Institutions Act that:-

“youthful offender” means a person who has been convicted of an offence punishable with imprisonment and has been found by the court, at the time of such conviction, to have attained the age of fifteen years but to be under the age of eighteen years.”

16. As regards enquiry as to the age, Section 22 of the Act provides:-

1. If at any time after a youthful offender has been sent to a borstal institution it appears to the Board of Visitors or the superintendent that the age of the youthful offender is other than that determined by the court and that he was under the age of fifteen years or had attained the age of eighteen years at the time of his conviction, the Board of Visitors or the superintendent shall cause the youthful offender to be taken before a court having jurisdiction to try the offence of which he was originally convicted so that the question of his age may be inquired into anew.
  2. Where a court before which a youthful offender is taken under subsection (1) finds that such youthful offender was at the time of his conviction under the age of fifteen years or had attained the age of eighteen years, it shall revoke the order for detention in the borstal institution and may pass such sentence as the court which tried the youthful offender might have passed on him, but without prejudice to anything lawfully done under the borstal order: Provided that the court in passing sentence under this subsection shall take into consideration the period during which the youthful offender was detained in a borstal institution.
  3. Notwithstanding anything in this Act, no person shall be detained in a borstal institution after he has attained the age of twenty-one years.
17. In this case, the Accused is not yet 21 years old but the trial courts reason for remanding him at Nakuru GK Prison was because of jumping bond not age . The trial court had no powers to terminate the sentence by remanding him in Nakuru GK Remand Prison. The order ought to have been that he continues serving the sentence as he proceeds with the Case in Nakuru. The Order therefore was irregular and calls for intervention by this Court.
18. The Court notes that on the same date when this Application was heard, that is 9<sup>th</sup> July 2025, a report was filed by George O. Odera HSC Superintendent In charge Shikusa Borstal Institution. That report is also dated 9<sup>th</sup> July 2025.
19. The Officer supports the Accused’s submissions that he is a candidate at the said Borstal Institution for Kenya National Secondary Examination and due to sit for the examinations in October 2025.
20. He states that being away from school might adversely affect his performance in the upcoming examinations. He therefore requested that the Accused continues to be held at Shikusa Borstal Institution and continues to attend the court remotely despite him having attained the age of majority and pursuant to Section 22(3) of the Act (*supra*).
21. In the circumstances herein:-
- i. The Order of the trial Court dated and issued on 12<sup>th</sup> June 2025 be and is hereby set aside.
  - ii. The accused is remanded at Shikusa Borstal institution to complete his sentence and Kenya National Secondary Examinations.
  - iii. Until then, the Accused person to attend Court sessions virtually in regard to *Nakuru CMCR. Case No. E438 of 2024.*



**DATED, SIGNED AND DELIVERED AT NAKURU THIS 22<sup>ND</sup> DAY OF JULY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Kihara for Applicant

Dennis Ochieng Odhiambo- Respondent

George O. Odera HSC Superintendent, Shikusa Borstal Institution

Ng'eno- Court Assistant

