



REPUBLIC OF KENYA



**Lotukol & 2 others v Republic (Criminal Revision E027, E028 & E029 of 2024
(Consolidated)) [2024] KEHC 2127 (KLR) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E027, E028 & E029 OF 2024 (CONSOLIDATED)**

RN NYAKUNDI, J

MARCH 4, 2024

BETWEEN

PETER EKAI LOTUKOL 1ST RESPONDENT

CHRISTOPHER EKAI 2ND RESPONDENT

SAMUEL EREGAE ALIAS JOPAPA 3RD RESPONDENT

AND

REPUBLIC APPLICANT

(Being a revision on the order of sentence before E753 of 2023, E689 of 2023 & E591 of 2023)

RULING

Representation:

Justice R. Nyakundi

Mr. Kakoi for the State

1. The respondents initially were charged with breaking into a building with intent to commit a felony contrary to section 207 of the [Penal Code](#) touching on Peter Ekai Lotukoi he pleaded guilty to the charge and on conviction was committed to Shikusa Borstal Institution for 2½ years. The DPP aggrieved with the decision filed an application for review of the order on sentence.
2. On the other hand, Christopher Ekai faced a charge of threatening to kill contrary to section 223 (1) of the [Penal Code](#). He pleaded guilty to the charge and on conviction he was placed to serve 12 months at Shikusa Borstal Institution. In the same vein the DPP being aggrieved with the decision on the order of sentence filed an application to have it reviewed by this court.
3. Similarly, Samuel Eregae was also charged with the offence of house breaking contrary to section 304(1) (b) of the [Penal Code](#) and into alternative handling stolen goods contrary to



section 322 (1) & (2) of the Penal Code. He also entered a plea of guilty and on conviction he was committed to Shikusa Borstal Institution for 18 months.

4. The common denominator in the three cases as deduced from the pre-sentence report and the medical age assessment reports is that the three of them were found to aged below 18 years.

Decision.

5. When the matter came up for hearing learned counsel for the prosecution contended that the orders on sentence as imposed by the trial court is in breach of the law as it relates to commitment of a juvenile found to be in conflict with the law to Borstal Institutions for a period of less than three years.
6. Therefore, urging the court to exercise review jurisdiction and have the order varied in consonant with the provisions of the Act. In terms of section 362 as read with section 364 of the CPC the exercise of the power is based before the high court to entertain a revision within the circumstances of these cases. The revisional power of the high court as concurrently been given by operation of section 362 as read with 364 of the Code and Art. 165 (6) & (7) of the Constitution.
7. The power is given to examine the record of any proceedings before any inferior criminal court situated within its or his/her local jurisdiction for the purpose of satisfying itself or himself/herself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such an inferior court. It is seen from the code and the Constitution that the exercise of revisional power by the high court is to call for the record and examine its legality, correctness, justness or regularity.
8. It may be noted that the respondents were at the material time aged below 18 years. A careful perusal of the decision by the trial court on sentence clearly shows that the learned magistrates failed to give effect to the mandatory provisions of the Borstal Institution Act more so section 5 as read with section 6 which provides as follows:

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

9. On a plain reading of the Act it is clear that the learned magistrates exceeded the jurisdiction in imposing various sentences which are at variance with the provisions of section 5 as read with section 6 of the Act. The language in the CPC on revision talks of legality, regularity, correctness and propriety. A definition of terms within the scope of the code is of relevance in this matter.

The ordinary meaning of the word “legality” is lawfulness. It refers to strict adherence to law, prescription, or doctrine, the quality of being legal.

The term ‘propriety’ means fitness, appropriateness, aptitude, suitability, appropriateness to the circumstances or condition conformity with requirement rules or principle, rightness correctness, justness, accuracy.

The terms ‘correctness’ and ‘propriety’ ordinarily convey the same meaning, that is something which is legal and proper. In its ordinary meaning and substance, correctness is compounded of legality and propriety and that which is legal and proper is ‘correct’.



The expression 'regularity' with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.

10. In so far as I am concerned the impugned decisions involves an error of law apparent upon the face of the record and it must be reviewed to be substituted with corresponding orders of the respondents being committed to Shikusa Borstal Institution for a period of 3 years. The committal warrants shall therefore be caused to be amended to revive the proportionate period provided in the Act.
11. It is so ordered.

DELIVERED, DATED AND SIGNED AT LODWAR ON THIS 4TH DAY OF MARCH, 2024

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R. NYAKUNDI
JUDGE

