



**JBM v Republic (Criminal Revision 304 'B' of 2024)  
[2024] KEHC 12977 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12977 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION 304 'B' OF 2024**

**AC BETT, J**

**OCTOBER 25, 2024**

**BETWEEN**

**JBM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The subject JBM was charged with defilement contrary to Section 8 (1) (2) of the *Sexual Offences Act*. The particulars of the offence were that on the 2<sup>nd</sup> day of July 2023 in Kakamega Central Sub-County within Kakamega County, he intentionally caused his penis to penetrate the vagina of CI a child aged four (4) years. In the alternative, he was charged with committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*.
2. After the case was partly heard, the subject changed his plea and pleaded guilty to the charge of defilement. Upon hearing his mitigation and considering the Pre-sentence report alongside the report from the Children’s Officer, the trial Magistrate committed the subject to a Borstal Institution for a period of two (2) years. At the time of committal, the subject was aged sixteen (16) years. After confirming that Shikusa Borstal Institution had a vacancy, the trial court issued orders that the subject be committed there. This was on 14<sup>th</sup> October 2024.
3. By a letter dated 17<sup>th</sup> October 2024, the Superintendent In-charge, Shikusa Borstal Institution noted that there was a discrepancy in the sentence because Section 6 (1) of the *Borstal Institutions Act* Cap 92 Laws of Kenya stipulated that where a subject is sentenced to serve a term in a Borstal Institution, it is for a mandatory term of three (3) years. It is for this reason that the trial Magistrate has forwarded the file to this court for revision.
4. Upon perusal of the file and the relevant provisions of the law, I hereby review the sentence in respect of the subject. Instead of the two (2) years prescribed by the trial Court, I review the sentence upwards



to the mandatory three (3) years. The subject is therefore committed to Shikusa Borstal Institution for a term of three (3) years.

**DATED AND SIGNED AT KAKAMEGA THIS 25<sup>TH</sup> DAY OF OCTOBER 2024.**

**A. C. BETT**

**JUDGE**

