



**JMN v Republic (Criminal Revision E121 of 2023)  
[2023] KEHC 530 (KLR) (Crim) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 530 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E121 OF 2023  
K KIMONDO, J  
FEBRUARY 7, 2023**

**BETWEEN**

**JMN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision from the sentence in Makadara Criminal Case 3641 of 2022  
by M. Thirabu, Resident Magistrate, delivered on 2nd November 2022)*

**RULING**

1. The revision on sentence was requested on January 25, 2023 by the learned trial magistrate sitting at Makadara.
2. The subject is a minor aged about 15 years. He was convicted under a plea bargaining agreement for preparation to commit a felony contrary to section 308 (1) of the Penal Code. The learned trial magistrate committed him to a borstal institution for 2 years.
3. The particulars were that on July 14, 2022 at Dr Griffin road, Starehe sub-county with another not before the court was found armed with a dangerous weapon namely a knife in circumstances that indicated he was so armed with intention to commit a felony.
4. I readily find that sentence handed down was irregular because section 6 (1) of the Borstal Institutions Act requires a residential period of at least three years. I have now considered the pre-sentence report filed on December 8, 2022 by the probation and aftercare service which recommends a probation order. I have also taken into account that the applicant is a first offender and the nature and circumstances of the offence.



5. In the best interests of the minor, and in accordance with section 191 (1) of the *Children Act*, I hereby set aside the sentence by the lower court. Instead, I sentence the applicant to serve probation for 2 years under the *Probation of Offenders Act* from the date of this order. The probation shall be under the supervision of the Murang'a county probation officer. During that period, the applicant shall reside with his mother in Murang'a and must undergo counselling at the Youth Centre at Kigumo hospital in Murang'a.
6. This matter shall now be remitted back to the trial court with the following further order: That in accordance with section 4 (3) of the *Probation of Offenders Act*, the learned trial magistrate shall explain to the offender in ordinary language his willingness to comply with the order made by the High Court and the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY 2023.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in chambers in the presence of-**

Mr. E. Ombuna, Court Assistant.

