



**Republic v JA (Criminal Revision E097 of 2024)  
[2024] KEHC 12841 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12841 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL REVISION E097 OF 2024  
DK KEMEL, J  
OCTOBER 23, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**JA ..... RESPONDENT**

**RULING**

1. Learned Counsel for the State vide a letter dated 17<sup>th</sup> October, 2024 has sought for revision or variation of committal orders by Hon. B. Limo dated 14/10/2024 in Siaya Chief Magistrates’ Court Criminal Case No. E492/2024.
2. The Applicant gravamen is inter alia; that the Respondent who is a minor was sentenced and thereafter committed to Shikusa Borstal Institution for a period of two years; that a vacancy has since been secured in accordance with the provisions of Section 8 of the *Borstal Institution’s Act* (Cap 92 Laws of Kenya; that the committal period of two years by the trial court is not compliant with section 6 (1) of *Borstal Institutions’ Act* which provides that an offender be committed to a Borstal Institution for a period of three (3) years; that it is now necessary to vary the committal order to reflect three years to enable the minor to be committed to the Borstal Institution; that it is in the interest of justice and the minor that this court exercises its powers under Article 165 (6) of the *Constitution* and Section 362 of the *Criminal Procedure Code*.
3. I have given due consideration to the applicants request. I have also perused the record of the trial court. It is not in dispute that the Respondent herein is a minor who pleaded guilty to the charge and was duly convicted on his own plea of guilty. It is also not in dispute that the trial court called for a pre-sentence report which recommended that the respondent be committed to Shikusa Borstal Institution for a period of three (3) years. It is also not in dispute that the Borstal Institution Act Section 6 (1) requires that child offenders ought to be committed for three years. I find the issue for determination is whether the Applicant’s request is merited.



4. The power of revision is donated to the High Court vide Section 362 of the Criminal Procedure Code and Article 165 (6) and (7) of the Constitution which are as follows: -

Section 362 CPC – The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purposes of satisfying itself 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 any such subordinate court.

Article 165 (6) Constitution - The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi – judicial function but not over a superior court.

Article 165 (7) Constitution - For the purpose of clause (6) the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

5. Being guided by the foregoing salient provisions of the law i must point out that the learned trial magistrate made an error when he committed the Respondent to two years to a Borstal Institution instead of the requisite three years. Indeed, the probation officer had recommended three years in view of the fact that the Respondent was a truant and required considerable period of rehabilitation. Due to the mandatory nature on the period of committal under Section 6(1) of the Borstal Institution Act, it is appropriate for this court to interfere with the order of the lower court.
6. In view of the foregoing observation, it is m finding that the Applicant’s request for revision has merit. The same is allowed. The committal order dated 14/10/2024 is hereby set aside and or varied and in its place substituted with an order that the Respondent is committed to Shikusa Borstal Institution for a period of three (3) years.

**DATED AND DELIVERED AT SIAYA THIS 23<sup>RD</sup> DAY OF OCTOBER 2024**

**D. KEMEI**

**JUDGE**

In the presence of:

.....Respondent

.....for Applicant

.....Court Assistant

