



REPUBLIC OF KENYA

High Court of Kisii

Criminal Revision 3 of 2013

STATE PROSECUTOR

VERSUS

EDWIN MOKAYA MAYIE..... ACCUSED

REVISION

1. This matter has been referred to me by the Nyamira Resident Magistrate, S. Okumu, for revision pursuant to **sections 362 to 367 of the Criminal Procedure Code, Cap 75 Laws of Kenya. Section 364 of the Criminal Procedure Code** provides that once proceedings of the subordinate court are before the High Court, the High Court may, on revision, take one of the following options:

- a) *In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358 and may enhance the sentence;*
- b) *In the case of any other order, than an order of acquittal, alter or reverse the order.*

2. **Subsection 2 of section 364 of the Criminal Procedure Code** prohibits this court from making any order under this section as would result in prejudice to an accused person, unless the accused has had an opportunity of being heard either personally or by an advocate in his own defence.

3. In the instant case, this court is being asked to revise the period for which the youthful offender herein is to remain at the Borstal institution in accordance with the provisions of **section 6 (1) of the Borstal Institutions Act, Cap 92, Laws of Kenya**, which reads:-

“Where the High Court or a subordinate court of the first class or a

juvenile court is satisfied, after considering the matters specified in section 5, that it is expedient for his reformation that a youthful offender should undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, direct that the offender be sent to a borstal institution for a period of three (3) years.”

4. In the instant case, the youthful offender was ordered to be sent to a borstal institution for a period of one (1) year instead of three (3) years as provided by law. The reading of **section 6 (1) of Cap 92** shows that the trial court has no option but to comply with the three (3) year period.

5. In the circumstances, and by the powers conferred upon me by **sections 362 (1) (b)** thereof I hereby revise the period for which the youthful offender herein was placed for rehabilitation from one (1) year to three (3) years.

6. It is so ordered.

Dated and revised at Kisii this 6th day of March, 2013

RUTH NEKOYE SITATI
JUDGE.