REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC. CRIMINAL REVISION E024 OF 2026

ELIAS KIPLETING...APPLICANT

VERSUS

ODPP...RESPONDENT

(***A revision against the orders of K. Mukabi Principal Magistrate in MC SOA E055 of 2026)***

RULING

1. Before this Court is a revision arising from the proceedings and sentence meted out by the learned trial Magistrate in **MC SOA NO. E 155 OF 2026.** The matter has been brought to the attention of court vide a letter by the Chief Magistrate dated 28th April 2026.

2. The subject, the child offender, aged fifteen (15) years at the time of conviction and sentence, was convicted for the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act. Upon conviction, the trial court sentenced the child to serve fifteen (15) years imprisonment, three (3) years thereof at a borstal institution and the remainder upon attainment of eighteen (18) years in an adult prison.

3. The record of the subordinate court has been called for pursuant to **sections 362 and 364 of the Criminal Procedure Code** to satisfy this Court as to the correctness, legality and propriety of the sentence imposed.

4. The issue falling for determination is whether the sentence imposed upon the child offender was lawful and consistent with the **Constitution, the Children Act, 2022,** and the applicable principles governing child justice.

5. The starting point is the Constitution. **Article 53(1)(f) of the Constitution** provides that every child has the right:

"not to be detained, except as a measure of last resort, and when detained, to be held—

*i. **for the shortest appropriate period of time; and***

*ii. **separate from adults and in conditions that take account of the child's sex and age."***

6. **Article 53(2)** further commands that:

   "A child's best interests are of paramount importance in every matter concerning the child."

7. The Children Act, 2022, gives effect to the foregoing constitutional guarantees. Section 238(1) thereof expressly provides that:

   "No court shall order the imprisonment of a child."

8. **Section 239 of the Act** sets out the lawful methods of dealing with children in conflict with the law. In particular, **section 239(1)(e)** provides that where the child is between twelve and fifteen years of age, the court may order that the child be sent to a rehabilitation institution suitable to the child's needs and circumstances. **Section 239(1)(g)** further provides that only a child who has attained the age of

sixteen years may be dealt with under the Borstal Institutions Act.

9. The statutory framework is therefore explicit. A child aged fifteen years cannot lawfully be sentenced to imprisonment. Equally, such a child cannot lawfully be committed to a borstal institution under **section 239(1)(g)** because that provision applies only to a child who has attained the age of sixteen years.

10. The learned trial magistrate therefore fell into manifest error in sentencing the child offender to fifteen years imprisonment, part thereof in a borstal institution and the remainder in an adult prison upon attainment of majority age. The sentence was plainly illegal.

11. The law relating to child offenders is anchored on rehabilitation, reintegration, restorative justice and the best interests of the child, rather than retribution. Detention and institutionalization are measures of last resort.

12. **Section 223(1) of the Children Act** provides that:

"Institutionalization and detention of children in conflict with the law pending trial shall be used as a means of last resort…"

13. Further, **section 225(1)** obligates every court dealing with a child offender to have regard to the best interests of the child and, where appropriate, take steps towards the child's education, training and rehabilitation.

14. The Court of Appeal has consistently emphasized that children in conflict with the law are to be treated differently from adult offenders. In **AOO & 6 others v Attorney General & anothe**r, **(Criminal Appeal 20 of 2019) [2023] KEHC 22495 (KLR),** the Court underscored the constitutional imperative that the justice system concerning children must prioritize rehabilitation and reintegration consistent with Article 53 of the Constitution.

15. Similarly, in **JKK v Republic**, the Court of Appeal reiterated that imprisonment of children is prohibited except in the limited circumstances expressly sanctioned by law

and that courts must always pursue measures geared towards the welfare and rehabilitation of the child.

16. In **Aima v Republic, 2023 KEHC 26963** the Court emphasized that section 238 of the Children Act prohibits imprisonment of children and that sentencing courts must resort only to the methods sanctioned under section 239 of the Act. Aima was 17 years old at the time of the commission of the offence and upon trial, he was convicted and sentenced to 10 years imprisonment. The court found the custodial sentence illegal and ordered his immediate release. He had served 3 years at the time the appeal was finalized and the court deemed the sentence served as sufficient.

17. From the foregoing, therefore, the sentence imposed herein also violated **Article 53(1)(f)(ii**) of the Constitution by purporting to consign the child to an adult prison upon attaining the age of eighteen years. The constitutional and statutory protections afforded to a child offender cannot be circumvented by a deferred imprisonment order.

18. Sentencing a fifteen-year-old child to serve part of the sentence in prison after attaining majority age defeats the entire philosophy of the child justice system. Such an order disregards the rehabilitative objective contemplated under the Constitution, the Children Act and international instruments including the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

19. This Court is therefore satisfied that the sentence imposed by the subordinate court was illegal, improper and unsustainable.

20. While it is clear that the subject is a minor, i note the medical examination report (P3) on record puts the age of the subject at 17 years old. The pre-sentence inquiry report puts the age at 16 years the subject having been born in 2010. The Children officer's child welfare preliminary report done in November 2025 put the age at 15 years. There is need for an age assessment report for purposes of appropriate sentencing.

21. In exercise of the revisionary jurisdiction donated by sections 362 and 364 of the Criminal Procedure Code, the sentence of fifteen (15) years imprisonment imposed upon the child offender is hereby set aside.

22. In substitution thereof, and taking into account the age of the child, the need for rehabilitation, the period already spent in custody, the best interests of the child, and the provisions of section 239 of the Children Act, this Court orders as follows:

1. **An age assessment of the subject be conducted at the MTRH.**
2. **The order on sentence by the trial court is hereby set aside and substituted thereof with an order remanding the subject at the juvenile remand home pending further orders of this court.**
3. **The subject be produced before this court for purposes of sentencing.**
4. **Matter be listed for mention for further orders/ directions.**

Dated signed and delivered virtually this 11th day of May 2026

A.K. NDUNGU

JUDGE