KENYA / JUDGMENT

Katana v Republic [2025] KEHC 16675 (KLR)

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COURT
High Court

BEFORE
JN Njagi

CASE / FILE NUMBER
Criminal Revision E026 of 2025

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Katana v Republic (Criminal Revision E026 of 2025) [2025] KEHC 16675 (KLR) (31 October 2025) (Ruling) Neutral citation:

[2025] KEHC 16675 (KLR) Republic of Kenya In the High Court at Garsen Criminal Revision E026 of 2025 JN Njagi, J October 31, 2025 Between Lali Kazungu Katana Applicant and Republic Respondent

Ruling

1. The applicant herein was convicted in count1 for the offence of trafficking in narcotic drugs (12 sachets of granular substance yellow substance yellow in colour suspected to be heroin) Contrary to Section 4 (a) (i) of the Narcotic and Psychotropic Substances Control Act No 4 of 1994 and Amendment of 2022. The applicant was at the time of sentence aged 16 years. He was committed to serve two years at Shimo la Tewa Borstal institution and after attaining the age of 18 years to serve two-years at Hindi G.K. Prison and to further pay a fine of Kshs 20,000/= in default to serve 3 months imprisonment. 2. In count 2 he was convicted of a similar offence as in count 1 for trafficking in 31 tablets of suspected quazepam drugs which is used for treatment of mentally disturbed persons. He was committed to Shimo la Tewa Borstal Institution for a period of 2 years and upon attaining the age of 18 years to serve one-year custodial sentence at Hindi G.K.Prison and to further pay a fine of Kshs 10,000/= in default to serve 2 months imprisonment. 3. The sentences were ordered to run concurrently. 4. The applicant has now filed an undated sentence review application in which he contends that the sentence imposed on him to serve 2 years imprisonment at Hindi G.K.Prison after commitment to the Borstal Institution was illegal. He urged the court to revoke the sentence of 2 years at Hindi G.K.Prison and he be allowed to serve three years at the Borstal Institution in accordance with Section 22 (3) of the Borstal Institutions Act which provides that an offender committed to a borstal institution may be detained there till attaining the age of 21 years. 5. The application is made pursuant to the provisions of Section 364 (i) of the

Criminal Procedure Code which provides that in case of proceedings in a Subordinate Court the record of which has been called for or which has been reported for orders, or which comes to its knowledge, the High Court may be in the case of any other order other than an acquittal, alter or reverse the order. 6. The application is also made pursuant to Sections 5 and 6 of the Borstal Institutions Act . Section 5 provides as follows: 5. Court before sentencing youthful offender to consider his history Before sentencing a youthful offender, a court shall consider the evidence available as to his character and previous conduct and the circumstances of the offence, and whether it is expedient for his reformation that he should undergo a period of training in a borstal institution. Section 6 provides as follows: 6. Committal of youthful offender to borstal institution (1) 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 years.

(2) (a) Where it appears to any court other than the High Court or a subordinate court of the first class after considering the matters specified as aforesaid, that a youthful offender should, for his reformation, undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, after recording the same, commit the offender in custody to a juvenile court having jurisdiction in the area, for sentence. (b) The juvenile court to which the youthful offender is committed shall itself consider the matters specified as aforesaid, and, if it is satisfied that it is expedient for his reformation that the offender should undergo training in a borstal institution, it may direct that the offender be sent to a borstal institution for a period of three years, or may deal with the offender in any way which would have been open to the court which committed the offender. 7. I have considered the grounds in support of the application and the submissions tendered by the applicant. It is clear from the provisions of sections 5, 6 and 7 of the Borstal Institutions Act that the whole aim of sending a youthful offender to a borstal institution is to assist in his reformation by undergoing a training at the borstal institution. Section 6(1) of the Act provides that the period of commitment of a youthful offender to a borstal institution is a period of 3 years. Section 22(3) provides that a committed offender to a borstal institution can be detained there until attaining the age of 18 years. In my view the period of 3 years is meant to give the offender sufficient time to undergo a training at the borstal institution. 8. It is also clear that the only time that a youthful offender committed to a borstal institution can be sent to prison custody over the charge that committed him to the borstal institution is where, as provided by section 22 of the Act, it is found that he was above the age of 18 years when he was committed to a borstal institution or on an application by the Commissioner under section 42 of the Act where the offender has conducted himself in such a manner as to render his detention in such borstal institution to be no longer expedient. This is not the case in the case pertaining to the applicant. 9. I have gone through the Borstal Institutions Act and I have not seen any section that gives power to a court to sentence a youthful

offender to both commitment to a borstal institution and to prison custody upon attaining the age of 18 years. The applicant herein was aged 16 years at the time he was sentenced. The proper sentence that the court should have passed on him was committing him borstal institution for a period of 3 years. 10. The trial court relied on the case of JKK v Republic Nyeri Criminal Appeal No 18 of 2011 where the court sentenced a youthful offender who committed an offence of manslaughter at the age of 16 but had reached the age of majority at the time of sentence and was sentenced to serve custodial sentence. However, that case can be distinguished from the facts of the case herein as the offender in the Nyeri case had not been committed to a borstal institution when he was sentenced to serve custodial sentence unlike in the case herein. In my view, the sentence on the applicant in this matter to serve prison sentence and to pay a fine upon attaining the age of 18 was unlawful and is for quashing. 11. The application herein is made pursuant to section 362 of the Criminal Procedure Cod e that provides that: The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose 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. 12. I have noted from the particulars of the charge in count 1 that the applicant was charged with trafficking in 12 satchets of granular substance yellow in colour that were suspected to be heroin. In count 2 he was charged with trafficking in 31 tablets of suspected cozepan drugs used for treatment of mentally disturbed persons. No medical evidence was adduced to prove the kind of drugs the applicant was convicted of. He was therefore convicted for trafficking in suspected drugs. 13. Our justice system requires that a case against an accused person be proved beyond reasonable doubt. At no time can an accused person be convicted out of suspicion as suspicion, however strong, cannot be the basis of a conviction – see Ahamad Abolfathi Mohammed & another v Republic

[2018] KECA 743 (KLR). 14. It is the duty of this court under the provisions of sections 362 and 364 of the Criminal Procedure Code to ensure that any conviction entered and sentence passed by a subordinate court is legal. The conviction and sentence in the case against the applicant herein were illegal for lack of proof on whether what he was found with were drugs. 15. In exercise of my powers for supervision of subordinate courts under section 362 and 364 of the Criminal Procedure Code , I do hereby quash the conviction and sentence entered against the applicant by the trial court and order that he be set at liberty forthwith unless lawfully held. DELIVERED, DATED AND SIGNED AT GARSEN THIS 31 ST DAY OF OCTOBER 2025 J. N. NJAGI JUDGE In the presence of: Ms Mkongo for Republic Applicant - Present at Shimo la Tewa Borstal Institution Court Assistant - Juma

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