



**Hussein v Republic (Criminal Revision E041 of 2024)
[2024] KEHC 13769 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E041 OF 2024
JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

MAHAT GARAT HUSSEIN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of defilement contrary to section 8(1)(3) of the *Sexual Offences Act* No 3 of 2016. The particulars of the offence were that on 24.07.2020 in Wajir East Sub County within Wajir County, he intentionally caused his penis to penetrate the anus of HM, a child aged 12 years.
2. The matter proceeded to full trial consequences whereof the appellant was convicted and sentenced to 20 years imprisonment. Aggrieved by the said conviction and sentence, he preferred an appeal which was dismissed on 3-3-2022.
3. The applicant has filed the current application dated 12.04.2024 seeking to have the court reconsider reducing his sentence and the time that he spent in remand custody.
4. During the hearing of the application, the applicant urged this court to reconsider reducing his sentence which he considered to be harsh while Mr. Kihara, the learned prosecutor urged that the application sought to reintroduce the previously dismissed appeal. It was his argument that this court is functus officio and therefore, the application ought to be dismissed for want of merit.
5. I have considered the application before me and the submissions by both parties. The only issue for determination is whether the applicant's prayer for review of sentence is tenable.
6. It is not in dispute that having been aggrieved by the judgement of the trial court, the applicant appealed to this court via Criminal Appeal No E005 of 2021 and the same was dismissed. Aroni



J dismissed the appeal in its entirety thus stating that the same was lawful and did not need any disturbance.

7. It is trite that sentencing is a judicial exercise. Once a judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate one.
8. From the foregoing, it is finding that this court has no jurisdiction to entertain the application herein and the same is thus dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

