



**Nyaga v Republic (Criminal Revision E008 of 2025)
[2025] KEHC 16962 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E008 OF 2025
RM MWONGO, J
NOVEMBER 19, 2025**

BETWEEN

OBED KINYUA NYAGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Background

1. In Embu MCSO No. 11 of 2015, the applicant was charged with the offence of defilement contrary to Section 8(1) read with 8(2) of the *Sexual Offences Act*. He was convicted and sentenced to life imprisonment.
2. He filed Embu HCCRA No.10 of 2018 wherein the conviction was upheld. This first appellate court set aside the life imprisonment sentence imposed by the trial court and substituted it with a sentence of 23 years, 9 months, taking into account the period of 1 year 3 months spent in custody pending trial. The High Court ordered that the sentence commence on the date of conviction. This judgment of the High Court was delivered on 01st September 2020.
3. The applicant then filed an application dated 31st December 2020 in which he sought sentence review. This application was determined through a ruling delivered on 09th June 2021 in which the High Court found it had no jurisdiction to review its findings on appeal. The sentence review application was dismissed.
4. The applicant stated in his application that he filed a second appeal at the Court of Appeal but the same was also dismissed. However, the court has not seen any material or records to suggest that there is a pending appeal before the Court of Appeal.



The Application

5. The present undated application again seeks sentence review. The applicant pleads that the life imprisonment sentence be set aside and substituted with a lesser custodial sentence or a non-custodial sentence. The application is accompanied by a presentence probation officer's report, and letters of recommendation from various organizations within the prisons system supporting the applicant's prayers.

Grounds of Opposition

6. The respondent filed grounds of opposition stating that the application lacks merit and that the court lacks jurisdiction to sit on appeal or review in its own decision. It urged the court to dismiss the application.

Parties' Submissions

7. The application was canvassed by way of written submissions.
8. In his submissions, the applicant urged the court to apply its discretion in his favour relying on Article 50(p) of *the Constitution*. He acknowledged that the court had already reduced the sentence from life imprisonment to 23 years and 9 months. He relied on the case of KNN v Republic [2020] eKLR and urged the court to consider that his circumstances since the time of his incarceration have changed, and that he is a reformed man. He claimed that the time spent in custody was not properly considered by the High Court in the judgment on appeal. He relied on the case of Ahmed Abolfathi Mohamed and another v Republic (2018) eKLR. He urged the court to reduce the remaining sentence from 23 years and 9 months imprisonment into a non-custodial one.
9. On its part, the respondent maintained that this court lacks jurisdiction to sit on review or appeal on its own decision. That the High Court's revisionary power under section 362 of the Criminal Procedure Code only applies to decisions of subordinate courts and not itself. It urged the court to dismiss the application for being incompetent.

Issue for Determination

10. The issue for determination is whether the court has jurisdiction to review the sentence.

Analysis and Determination

11. The revisionary power of the High Court is drawn from Article 167(6)&(7) of *the Constitution* which provides:
 - “(6) 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.
 - (7) For the purposes 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.” [Emphasis added]



12. Section 362 of the Criminal Procedure Code provided as follows on the High Court's supervisory jurisdiction:

“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.”

13. The applicant seeks a revision of the sentence of 23 years and 9 months imprisonment imposed by this court on appeal. Initially, the trial court had sentenced the applicant to life imprisonment which was set aside on appeal. The jurisdiction of the High Court in revision is limited to orders or proceedings of a subordinate court. In this case, the subject matter is a decision of the High Court.

Conclusions and Disposition

14. A review of the nature sought by the applicant is expressly excluded under section 362 (6) of the Criminal Procedure Act which prohibits it from reviewing a Superior Court's decision. In fact, the applicant had previously filed a sentence review application which was dismissed by this court on the same basis of lack of jurisdiction. In that ruling delivered on 09th June 2021, this court, differently constituted, stated that it lacked jurisdiction to sit in revision of appeal on its decision.

15. The only available avenue for the applicant in terms of sentence review is to challenge the same at the Court of Appeal. He mentioned that he had lodged a second appeal before that court but there is no record of such an appeal.

16. The issue of consideration of time spent in custody pending trial was determined in the judgment delivered on 01st September 2020 and the time was duly considered.

17. In the result, the application has no merit and is hereby dismissed since the court lacks jurisdiction to entertain it.

18. Orders accordingly.

DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 19TH DAY OF NOVEMBER, 2025, PURSUANT TO NOTICES ISSUED ON 10TH NOVEMBER AND 12TH NOVEMBER, 2025 AS TO ELECTRONIC DELIVERY.

R. MWONGO

JUDGE

