



REPUBLIC OF KENYA



**Kamende v Republic (Criminal Revision E198 of 2022)
[2023] KEHC 354 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E198 OF 2022
LN MUGAMBI, J
JANUARY 27, 2023**

BETWEEN

MARTIN MUTUA KAMENDE APPLICANT

AND

REPUBLIC RESPONDENT

(A revision on sentence of the Chief Magistrate’s Court at Thika, (B.J. Bartoo, RM) dated 24th May, 2017 in Criminal Case No. 3428 of 2015)

RULING

1. The applicant was convicted and sentenced in Criminal Case, CM’s Court at Thika No. 3428 of 2015. He was sentenced to serve 20 years imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*.
2. He subsequently appealed to the High Court at Kiambu *vide* Criminal Appeal No. 4 of 2019 and the sentence of the Lower Court was set aside and reduced to fifteen (15) years imprisonment by Justice E.N. Maina on 1st October, 2019 in a judgment delivered on 17th October, 2019.
3. In the present application filed on 5th July, 2022, the applicant is seeking a review of the sentence so that the period he spent in remand custody is considered. In his brief oral submissions, before me, he stated that the period was two years and eight months.
4. The State represented by Mr. Gacharia in its submission stated:-

“He had appealed against sentence by Lower Court and sentence was reduced from 20 years to fifteen (15) years. He now seeks the court to invoke its powers under Section 333(2) of the *Criminal Procedure Code* by which we are not opposed to.”



5. It is clear to me that the sentence that the applicant wants this Court to review by taking into account the period he had spent in custody is not in respect to the sentence imposed by the lower court (that sentence was set aside), rather it is the subsisting sentence in which the High Court imposed a term of imprisonment of 15 years on the October 19, 2019 at the time it set aside the lower court sentence.
6. Does this Court have review jurisdiction over the High Court sentence?
7. Under Section 362 of the [Criminal Procedure Code](#), the powers of revision are vested in the High Court and apply only in respect of proceedings before a subordinate court. It provides: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to 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.”
8. Section 364(1) reinforces this position and indicates what the High Court is authorised to do in the exercise of its revisionary jurisdiction over the subordinate court.
9. This statutory draws its legitimacy from Article 165(6) of the [Constitution](#) which clothes the High Court with wide ranging powers in supervising the subordinate courts and any other person, body or the authority exercising a judicial or quasi-judicial function, but, it says clearly, “but not a Superior Court.”
10. Indeed, the succeeding provision, Article 165 (7) is defines the extent of this jurisdiction with particularity and in my view, is more expansive than what is circumscribed under section 364 of the [Criminal Procedure Code](#). Article 165 (7) provides:

“For purposes of clause (6), the High Court may call for the record of proceedings before any subordinate court or person, body or authority referred to in clause (6), and make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
11. The emphasis here is the bodies over which the supervisory power is exercisable and the extent to which the High Court is permitted to go, that it can ‘order or give any direction’ as long as in its discretion it is appropriate in ensuring fair administration of justice.
12. Although the Judge who sat and decided the appeal is not the one handling the instant application, she was a Superior court Judge. The jurisdiction she had is similar to that of the Judge presently presiding over this application.
13. This Court has no legal capacity to alter and/or review the sentence of another Superior Court Judge.
14. The recourse available to the applicant is to invoke the appellate jurisdiction of the Court of Appeal. The options available to the applicant before the High Court have been extinguished. This Court is *functus officio*.
15. The application is hereby dismissed.

RULING DATED and DELIVERED at KIAMBU this 27th day of JANUARY 2023.

L.N. MUGAMBI

JUDGE

In the presence of :-



Coram:

Court Assistant: Kinyua

For the Appellant: absent

For Respondent: Mr. Gacharia for DPP

Court

Ruling delivered virtually.

L. N. MUGAMBI

JUDGE

