



**Andesi v Republic (Criminal Revision E504 of 2022)
[2023] KEHC 1547 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E504 OF 2022
DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

ELIZABETH ANDESI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to 10-years imprisonment for the offence of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#). The applicant now seeks a revision of her sentence to a non-custodial one.

Analysis of law.

2. Upon receipt of the request for revision of sentence, this court directed that a sentence review report be filed on the convict for consideration by the court.
3. The Probation Officer Ms Jenevive Akinyi filed a report on the convict for consideration by the court. The report shows that the applicant is aged 24 years. She is currently serving her sentence in Langata Women Prison. She has served for 6 years and 7 months having been sentenced on June 12, 2018.
4. The provisions of section 362 as read with section 364 of the [Criminal Procedure Code](#) are clear that revision jurisdiction is by no means an appeal by the aggrieved party to the High Court in criminal cases where such orders are being sought under section 364. On revision the court should steer clear from trespassing into the realm of appellate jurisdiction.



5. The issue herein is whether the circumstances of the matter does justify a revision by a superior court from subordinate court. On this issue I draw guidance as elucidated in the case in the case of Republic v James Kiarie Mutungei [2017] eKLR, Nyakundi J held thus:

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits...”

6. The sentence for committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act is imprisonment for a term of not less than ten (10) years. As such, it has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.

7. I am nonetheless alive to The Sentencing Policy Guidelines page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”

8. Notwithstanding the forgoing, I take notice of the probation report by Ms Jenevive Akinyi which indicates that the applicant is 24 years old and an orphan having been raised by her paternal aunts who are also deceased.

9. She reported that the applicant has no community ties as her family have shunned her. It was her recommendation that the lack of a solid support system coupled with her attitude towards what she did, the nature of the offence she was convicted of and the rehabilitative and reintegration measures that will be employed to avert reoffending, community supervision will be challenging. Taking the above facts into consideration, she concluded that it was not recommended for the applicant to serve the remainder of the sentence within the confines of the community.

10. Having taken all the facts and circumstances into consideration, I am of the view that this is not a suitable case for non-custodial sentence and the objective of sentencing can only be met by a custodial sentence. Furthermore, guided by section 3 (10) of the Community Service Orders Act, an order of community service shall not apply to a person who is convicted under the Sexual Offences Act No 3 of 2006.

11. I hereby dismiss the application for revision and sustain the 10 years sentence to run from the date the applicant was arraigned in court.

12. It is so ordered.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023

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D. KAVEDZA



JUDGE

In the presence of:

