



**Mohamed v Republic (Miscellaneous Criminal Application
E005 of 2020) [2023] KEHC 19487 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2020**

JN ONYIEGO, J

JUNE 30, 2023

BETWEEN

ABDIKADIR MOHAMED APPLICANT

AND

REPUBLIC RESPONDENT

(**Being an Appeal against the Conviction and Sentence in the Principal Magistrate's Court at Mandera in Sexual Offences Case No. 29 of 2019 delivered by Hon. P.M. Areri (PM)**)

RULING

1. The Appellant was charged with the offence of defilement contrary to Section 8(1) (3) of the [Sexual Offences Act](#) No 3 of 2006. He was further charged with an alternative count of committing an indecent act with a child contrary to section 11 (1) of the [Sexual Offences Act](#). He was convicted of the alternative count and sentenced to 5 years' imprisonment.
2. Aggrieved by the conviction and sentence, he appealed to the High Court vide Criminal Appeal No 16 of 2020. Upon hearing the appeal, the high court upheld the conviction and sentence
3. Subsequently, the applicant moved to this court again through this Miscellaneous Application file seeking review of the sentence on grounds that he was remorseful and repentant; he is the sole breadwinner of his family; he is a first offender and the court to consider the 3 months spent in remand custody.
4. The respondent (Republic) filed grounds of opposition arguing that the application lacks merit and that there is no appeal pending before court for consideration.
5. I have considered the application herein which is seeking review of the sentence. It is trite law that sentencing is at the discretion of the trial court to which an appellate court would only interfere if



the same is excessive, the trial court applied wrong legal principles or considered irrelevant factors. See: *Shadrack Kipkoech Kogo v Republic Eldoret Criminal Appeal No 253 of 2003 Court of Appeal*.

6. In the Instant case, the high court considered the aspect of sentence and concluded that it was sufficient and appropriate in the circumstances. If the appellant was dissatisfied, he would have appealed. This court is therefore *functus officio*.
7. Accordingly, the application is dismissed. Applicant to continue serving his sentence.

Dated, signed, and delivered in open court at Garissa this 30th day of June, 2023.

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J. N. ONYIEGO
JUDGE

