



**Ibrahim v Republic (Miscellaneous Criminal Application  
E003 of 2023) [2023] KEHC 21712 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21712 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2023**

**JN ONYIEGO, J**

**JULY 28, 2023**

**BETWEEN**

**HUSSEIN ABDI IBRAHIM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(CR Appeal No E013/ 2020 Garissa High Court.)*

**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 2006. Particulars were that on the March 9, 2018 at 4.00 am in Mandera North Sub- county within Mandera County intentionally caused his penis to penetrate the vagina of ZAI a girl aged 15 years.
2. He was alternatively charged with the offence of committing an Indecent Act with a child contrary to Section 11 (1) of the *Sexual Offences Act* No 3 of 2006. Particulars were that on the March 9, 2018 at 4.00 am, in Mandera North Sub – county within Mandera County intentionally touched the buttocks and vagina of ZAI a girl child aged 15 years with his penis.
3. In conclusion of the trial, the applicant was convicted for the main count and sentenced to 20 years' imprisonment. Aggrieved by the conviction and sentence, he filed CR Appeal No E013/ 2020 Garissa High Court. On November 4, 2021 Lady Justice Abida Aroni upheld the conviction but substituted the Sentence of 20 years to 14 years and 5 months. After taking into account the 4 months spent in remand custody.
4. Undeterred the applicant filed the instant application seeking review of sentence on grounds that: He was transformed: he has acquired Islamic Training and is ready to spread the gospel and that he is remorseful and therefore deserves forgiveness.



5. In response Mr Kihara for the state opposed the application stating that the application amounts to abuse of the court process, and that this court cannot review its own orders as it is *functus officio*.
6. I have considered the application herein and the response thereof. There is no dispute that the applicant was convicted and sentenced to 20 years. The conviction was upheld and sentence reduced or substituted in his favour. After due consideration of the period spent in remand custody. This court is being asked to further reconsider reviewing sentence on sympathy grounds.
7. Having pronounced itself through its Judgment, this court is *functus officio*. Article 163 (6) (7) only allows the High Court to exercise supervisory jurisdiction over sub-ordinate courts and not supervise courts. This application is non –starter and it best an abuse of the court process hence dismissed.
8. Order accordingly.

**DATED, SIGNED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JULY, 2023.**

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**J. N. ONYIEGO**

**JUDGE**

