



**Njugo v Republic (Miscellaneous Criminal Application E051 of 2021)  
[2023] KEHC 27339 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
MISCELLANEOUS CRIMINAL APPLICATION E051 OF 2021  
SN MUTUKU, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**JOHN GATHITU NJUGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant has moved this court through a Chamber Summons filed in court on May 4, 2021. He is seeking revision of sentence. The application is pegged on section 364 of the [Criminal Procedure Code](#). This section provides that:
  - (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
    - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
    - (c) in proceedings under section 203 or 296(2) of the [Panel Code](#), the [Prevention of Terrorism Act](#), the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#), the Prevention of Organized Crimes Act, the [Proceeds of Crime and Anti-Money Laundering Act](#), the [Sexual Offences Act](#) and the [Counter-Trafficking in Persons Act](#), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.



2. The Applicant was charged with defilement contrary to section 8(1) read with 8(3) of the *Sexual Offences Act*. He was found guilty and sentenced to 20 years imprisonment. Pursuant to an order of this court in Misc. Criminal Application No. 66 of 2019, the court directed that the Applicant's file be placed before the trial court for resentencing. The trial court reduced the sentence to 15 years.
3. He has submitted that he has served most of the sentence and has only 6 years to serve. He makes a case of poor health as the reason he is seeking review of the sentence.
4. The application is opposed by the Respondent on the grounds that the Applicant has not demonstrated any grounds to show that the prayers he is seeking are merited. The Respondent has cited several authorities to support its case, among them *Bernard Kimani Gacheru v Republic* [2002] eKLR where the Court of Appeal states as follows:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless anyone or the matters already stated is shown to exist.”

5. It is clear to me that the Applicant is approaching the court for the second time seeking sentence reduction. He has admitted that his original sentence of 20 years was reduced to 15 years after the High Court directed the trial court to review the same. In my view, the applicant is not justified in coming back to court to seek another review. Pleading ill-health is not sufficient given that there are health facilities where he can be attended to and where necessary referrals can be made to other health facilities better equipped to attend to him.
6. For the applicant to keep on coming back to court on review of sentences is an abuse of this court's process. I decline to allow this application and order that the Applicant continues to serve the remainder of the sentence.
7. Orders shall be issued accordingly.

**DATED, SIGNED AND DELIVERED THIS 27<sup>TH</sup> SEPTEMBER 2023.**

**S. N. MUTUKU**

**JUDGE**

