



**Hassan v Republic (Miscellaneous Criminal Application E020 of 2023)  
[2023] KEHC 24843 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24843 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E020 OF 2023  
JN ONYIEGO, J  
OCTOBER 31, 2023**

**BETWEEN**

**HUSSEIN IBRAHIM HASSAN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was charged with the offence of defilement Contrary to Section defilement contrary to section 8 (1) as read with Section (4) of the [Sexual Offences Act](#) 2 No. 3 of 2006. of The [Sexual Offence Act](#) No. 3 of 2006.  
The particulars were that on 29<sup>th</sup> June,2020 at Central Location in Mandera East Sub County within Mandera County he intentionally caused his penis to penetrate the vagina of JH a child aged 17 years.
2. He was also found with an alternative count 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 29<sup>th</sup> June, 2020 at Central location in Mandera East Sub-county within Mandera County intentionally touched the breasts of JH a child aged 17 years.
3. Upon conclusion of the trial, he was convicted and sentenced to serve 15 years' imprisonment. Aggrieved by both conviction and sentence, he appealed *vide* Cr. Appeal Number 47 of 2021. After canvassing the appeal, the court delivered its Judgment on 29<sup>th</sup> September, 2023 thus dismissing the appeal in its entirety.
4. Subsequently, he filed what he referred to as humble mitigation dated 2-10-2023 seeking review of the sentence on grounds that; he was remorseful of his ugly activities; he has since reformed by undergoing madrassa (Islamic teachings) hence fully reformed and deserves a lenient sentence.



5. In response, the respondent opposed the application thus stating that the application is an abuse of the Court process considering that an appeal challenging the same sentence had been considered and determined.
6. I have considered the application herein and the response herein.
7. The court is being asked to review Sentence which has been concluded in appeal and dismissed. to that extent this court is *functus officio*. The only remedy the applicant has is to appeal to the Court of Appeal. Both Sections 362 and 364 do not apply as there is no claim of illegality or impropriety of proceedings or order or sentence passed.
8. I am alive that, sentence is at the discretion of the trial court hence and appellant court will only intervene if the same is excessive, or arrived at upon applying wrong legal principles or considering irrelevant factors. See *Ogolla s/o Awour v Republic* (1954) EACA.

“The court does not alter a sentence unless the trial Judge has acted upon hearsay principles or overlooked some material factors.”

9. Having taken into account that, the Court has already considered the substantive appeal including the aspect of sentence, hence no jurisdiction to entertain this matter further. The court is simply *functus officio*.
10. Accordingly, the application is dismissed for lack of merit.

Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 31<sup>ST</sup> DAY OF OCTOBER, 2023.**

**J. N. ONYIEGO**

**JUDGE**

