



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiatu v Republic (Criminal Revision E131 of 2021)  
[2022] KEHC 10172 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10172 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL REVISION E131 OF 2021  
GMA DULU, J  
JUNE 30, 2022**

**BETWEEN**

**JOSEPH KATUA KIATU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In this matter, the applicant has come to this court for revision of sentence through a Notice of Motion filed on March 15, 2021, which he drafted as an application for leave to appeal out of time.
2. It is when the matter was mentioned in court, that he disclosed orally that he wanted a review of his sentence by the court, to take into account the period he was in remand during trial in computing his sentence. He also disclosed to the court that he had filed an appeal in Machakos as High Court Criminal Appeal No. 153 of 2013, which had already been determined.
3. I have been availed and perused the judgment in Machakos High Court Criminal Appeal No. 153 of 2013, and note that the applicant herein, Joseph Katua Kiatu, was convicted of attempted defilement of a child of 3 years 8 months, and sentenced to 15 years imprisonment.
4. His appeal to the High Court at Machakos against conviction and sentence which appeal was dismissed.
5. I have also seen and perused the judgment and sentence of the trial court. With regard to sentencing, I note that the trial magistrate reasoned as follows –

“The offence the accused is charged with attracts a mandatory minimum sentence of 10 years taking into account the age of the minor (3 years and 8 months at the time of offence), I



am satisfied that the situation prevailing is more aggravate (sic) and a deterrent sentence is required”

6. I note further that the applicant first appeared before the trial court on November 15, 2012, and was sentenced on April 25, 2013– a period of about 5 months only. In my view therefore, it cannot be said that the trial magistrate erred in computing the sentence of the appellant, as sentencing is an exercise of discretionary power by a trial court, based on the facts and circumstances available to the trial court during sentencing.
7. I thus find no legal basis for reviewing the sentence as requested, as same was properly and lawfully determined by the trial court after the delivery of judgment, and the High Court confirmed the sentence on appeal. The applicant’s further avenue could only be an appeal to the Court of Appeal, if he contests either conviction or sentence or both.
8. Consequently, I find no merits in the request of the applicant to review his sentence. I decline the request.

**DELIVERED, SIGNED & DATED THIS 30<sup>TH</sup> DAY OF JUNE 2022, IN OPEN COURT AT MAKUENI.**

**GEORGE DULU**

**JUDGE**

