

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL REVISION NO. E005 OF 2020

KEVIN IRUNGU NDEGE...APPLICANT

– VS –

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with the offence of **Rape Contrary to Section 10 of the Sexual Offences Act**. He was convicted and sentenced to serve 15 years imprisonment on the 20/12/2018.
2. He filed an appeal challenging both conviction and sentence vide Kerugoya HCRA No. 1 of 2019.
3. His application for bail/bond pending appeal was dismissed on the 9/6/2020. The appeal has been admitted for hearing.
4. In the meantime, while the appeal is pending hearing and determination, the Applicant filed the present application on the 3/9/2020 seeking review orders of the trial court's Judgment, with a view to reducing the sentence.
5. The application is supported by an affidavit sworn by the applicant and grounds stated on the face of the application, mainly that he was remorseful, rehabilitated and now of good conduct and character. He states to have been a first offender. He further urges that the court do consider the period spent in custody.
6. I have looked at and considered the applicants Appeal No. 1 of 2019 pending in this court.
7. On the 9/6/2020, the Court (Gitari J) by a ruling on bail pending appeal observed that the appeal had already been admitted for hearing.
8. In the circumstances, while the appeal is pending, this court cannot entertain and determine the applicant's application for re-sentencing. A party to move the court for re sentencing hearing must first exhaust all appeal options, and only after that, if all are dismissed or withdrawn, would the court entertain the application for reduction of the sentence.

For those reasons, I find the application to be pre-mature.

It is dismissed.

Delivered, Dated and Signed at Kerugoya this 11th Day of February, 2021.

J. N. MULWA

JUDGE