

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

REVISION NO. E002 OF 2020

ENOCK MARUBE BOSIRE.....APPLICANT

-VRS-

THE REPUBLIC.....RESPONDENT

{From original Conviction and Sentence of Hon. C. W. Waswa – RM in the

Original Nyamira Chief Magistrate’s Court Sexual Offence No. 21 of 2019}

RULING

This file has been placed before me for revision vide a Notice of Motion dated 14th July 2020. In the application the applicant seeks revision of his sentence of seven years imprisonment for the offence of rape. He bases his application on grounds that he is very remorseful, that he is a first offender and a single parent to underage children who are suffering as he was the sole breadwinner and that since incarceration he has reformed and he now prays for a second chance to serve his nation. In his affidavit in support of the application he has stated that he did not appeal the conviction and sentence because his family could not raise the fee required, that he did not receive the judgement in good time and that it is in the interest of justice that this application is heard and determined on its merit.

I am however not persuaded that the application ought to succeed. Firstly, as stated by the applicant he had a right of appeal which he did not exercise. He is therefore by virtue of **Section 364 (5)** of the **Criminal Procedure Code** restrained from seeking revision. **Section 364 (5)** of the **Criminal Procedure Code** states: -

“(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

If this application is made because the applicant did not appeal on time it must fail because he could have sought leave to appeal out of time. Secondly an appellant does not pay any fees to appeal a conviction and sentence to the High Court so again that too is not a good ground. That he is a first offender is an issue of mitigation which I believe was considered by the trial court. As for the fact that he has reformed that is a ground to be considered by the Prison authorities when considering remission.

Secondly, even were this court to assume that the applicant has come to this court in exercise of his right for review to a higher court provided for in **Article 50 (2) (q)** of the **Constitution** I still find that he has not furnished this court with any material to enable it to consider that application. The application would still fail for being incompetent. The same is therefore dismissed.

E. N. MAINA

JUDGE

18/12/2020