



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL REVISION NO. 161 OF 2016**

**MARIAM AMAI ORICHUM..... APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**RULING**

1. This case is before me for revision under the provisions of Section 362 and 364 of the Criminal Procedure Code. The revision was filed on 27/09/2016 after withdrawal of appeal No. HCRA 64 of 2014.
2. The applicant was convicted of the offence of sexual assault contrary to Section 5(1)(b) of the Sexual offences Act and sentenced to ten (10) years imprisonment.
3. The prayer in this application is for review of sentence on grounds that the applicant having served under eleven (11) months of the sentence has reformed. He states that he was sitting his Certificate of Primary Education (CPE) examination in 2016 and has undergone vocational training in prison in crocheting, making of detergents and shampoo as well as bible courses.
4. The applicant prays for a revision of sentence by setting aside the imprisonment sentence and substituting it with a suspended sentence.
5. I have looked at the Sexual Offences Act and note that it does not provide for a suspended sentence. It is further noted that the minimum sentence provided for by Section 5(1)(b) of the Act is ten (10) years imprisonment which may be enhanced to life imprisonment. The magistrate could not have given any other sentence save for that provided by the law.
6. Section 362 gives this court power to revise sentence or order in the event that the magistrate committed an illegality, irregularity or mistake. In this application, I find that the sentence imposed was within the law and that no irregularity or illegality was committed by the magistrate.
7. It is further noted that the mitigation of the applicant was taken into consideration notwithstanding that his hands were tied by the law as regards sentence.
8. I therefore find no basis in law to review the sentence and therefore, dismiss this application.
9. It is hereby so ordered.

**DATED AND SIGNED AT EMBU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**