



REPUBLIC OF KENYA



KENYA LAW
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**Shaban v Republic (Criminal Revision E165 of 2024)
[2025] KEHC 134 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E165 OF 2024**

M THANDE, J

JANUARY 17, 2025

BETWEEN

HASSAN KOMBO SHABAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By his Application, the Applicant seeks review of the sentence imposed upon him. The facts are that the Applicant together with his co-accused was convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* in Mariakani Criminal Case No 506 of 2015 sentenced to 15 years imprisonment. He now seeks commutation of the sentence to probation placement.
2. The respondent filed grounds of opposition dated 10.9.24. the grounds are that the sentence imposed upon the Applicant was determined by the trial court as a matter of fact and that this Court does not have jurisdiction to review the same through the Application; that litigation must come to an end; that the Application ought to be dismissed as it is bad in law, an abuse of the court process and devoid of merit.
3. This Court derives its jurisdiction principally from Article 165(3) of the *Constitution* which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers as provided for under Article 165(6) as follows:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.



4. The Constitution has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice

5. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.

6. To give effect to this provision with regard to criminal matters, the Criminal Procedure Code elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the Criminal Procedure Code provides:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

7. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness of that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 enhance the sentence or alter or reverse the order except that of an acquittal.

8. Section 364(5) is explicit that 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.

9. Section 347 of the Criminal Procedure Code provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. One such case is Speaker of the National Assembly v James Njenga Karume [1992] eKLR where the Court of Appeal stated:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

10. The Applicant has not demonstrated that the sentence imposed upon him is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court. Flowing from the above stated provisions of the law and the authority cited, the Applicant's redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon.



11. In light of the foregoing, the Court finds that the Application is devoid of merit and the same is hereby dismissed.

DATED SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF JANUARY 2025

M. THANDE

JUDGE

