



**EM v Republic (Criminal Revision E145 of 2024)  
[2025] KEHC 2181 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2181 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL REVISION E145 OF 2024  
HM NYAGA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**EM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant moved this court vide an undated Application in which he seeks orders that;
  - a. That this honorable court be pleased to hear and determine this application under the stated provisions of the law and any other provisions of the law as it may deem fit .
  - b. That the honorable court be pleased to review pursuant to the Court of Appeal at Malindi judgment dated 7<sup>th</sup> July 2024 In petition number 12 of 2021 between Julius Kitsao Manyeso vs Republic.
  - c. That the court be pleased to grant any other order it deems fit in the circumstances of this application.
2. The applicant was arraigned before the Chief Magistrate’s Court at Meru on a charge of incest, contrary to section 20(1) of the *Sexual Offences Act* and indecent act with a child contrary to section 11(1) of the *sexual Offences Act*.
3. After a full trial, the Applicant was convicted on both counts and was sentenced to 27 years’ imprisonment on the first count.
4. The applicant appealed against the conviction and sentence vide High Court Criminal Appeal No. 29 of 2014. This court dismissed the appeal on the first count and allowed the appeal on the second count.



5. The applicant has now moved this court seeking a review of the sentence and begs for a chance to be placed on a non-custodial sentence for the remainder of their sentence. The applicant has urged the court to allow him avail further mitigating factors as per section 216 and 329 of the *Criminal Procedure Code*(CPC). The applicant avers that he is remorseful for his actions and is fully rehabilitated. The applicant sought reliance on the Court of Appeal decision in *Julius Kitsao Manyeso* [2020] eKLR.
6. The Respondent, through the prosecutor, argues that this court lacks the requisite jurisdiction to entertain this application.

### **Analysis & Determination**

7. There are two issues that arise for determination.
  - a. Whether this court has jurisdiction to determine this matter.
  - b. If answer to the above is in the affirmative, whether the Applicant's plea for resentencing is merited.
8. Needless to state, if the court is to find that it does not have jurisdiction, then it will not be necessary to address the second issue.
9. It is not in dispute that the Applicant was charged, convicted and sentenced to 27 years imprisonment for the offence of incest. On appeal, the conviction and sentence on that count were upheld.
10. Article 165(6) and (7) of the *Constitution* confers upon this Court supervisory jurisdiction over subordinate courts and empowers this Court to make any order to give any direction it considers appropriate to ensure fair administration of justice. The said provisions are couched in the following terms:
  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 purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of 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.”
11. The *Criminal Procedure Code* expounds on this jurisdiction. Section 362 thereof provides that :-

“ 362. 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 subordinate court.
12. The revisionary powers vested in this court under Section 362 of the *Criminal Procedure Code* is principally to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any subordinate court.
13. Therefore, the court has no powers to revise a sentence which it has passed, in this case, confirmed on appeal. This position has been affirmed by two decisions of this court.



14. In *John Kamau Gachuba v Republic* [2019] eKLR the Court held as follows;

“... The applicant merely seeks the imposition of a more lenient sentence. This court has no revision jurisdiction over an appeal it has concluded. The applicant’s only option is to appeal in the Court of Appeal...”

15. Similarly, in *John Kagunda Kariuki v Republic* [2019] eKLR the Court held as follows;

“In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal...”

16. The only remedy thus available to the Applicant now lies with the Court of Appeal, should the applicant feel aggrieved by this Court’s determination on appeal. This court does not have jurisdiction to determine the issues raised in the application for a second time.

17. In view of the foregoing, I find that the application is devoid of merit and it is dismissed.

**H. M. NYAGA**

**JUDGE**

**DATED, SIGNED AND DELIVERED IN MERU THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**H. M. NYAGA**

**JUDGE**

