



REPUBLIC OF KENYA



KENYA LAW
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**Biegon v Republic (Criminal Revision E075 of 2022)
[2025] KEHC 2626 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E075 OF 2022**

JK SERGON, J

MARCH 6, 2025

BETWEEN

JOASH BIEGON APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of unnatural offence contrary to section 162 (b) of the *Penal Code*. The applicant was convicted on his own plea of guilt and on 7th January, 2021 sentenced to seven (7) years imprisonment by Hon. B.R. Kipyegon in Kericho Criminal Case No. E 450 of 2020 *Republic v Joash Biegon*.
2. The applicant has moved this court for sentence review pursuant to the provisions of Sections 362, 364 and 367 of the *Criminal Procedure Code* Cap 75 Laws of Kenya citing that the proceedings and sentence meted out was irregular because the trial court never considered that he was a minor at the time of sentencing. He attached a copy of his birth certificate in support of his claim that he was 16 years at the time of sentencing. He therefore urged this court to quash and set aside the order on sentence and set him free.
3. The matter came up for inter partes hearing and the applicant urged this court to review his sentence and consider placing him on probation for the remaining term of his sentence. The Prosecutor requested this court to have the birth certificate authenticated by the Directorate of Criminal Investigations (DCI).
4. This court has carefully perused the record and finds that the applicant had made a similar application before this court and that on 4th October, 2022, Lady Justice A. N. Ongeri disallowed the application stating that there is no provision for sentence review where an appeal lies and proceeded to grant the applicant leave to file an appeal. This position still stands.



5. I have considered section 348 of the *Criminal Procedure Code* which provides that; “No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.” It is clear from the above quoted excerpt that the Applicant has a right of Appeal as against the sentence. The Applicant opted to file this Revision instead of challenging the Order on sentence by way of an Appeal. The Law does not permit a party who is entitled to challenge the order on conviction or sentence on Appeal to personally approach the Court for revision. It would appear from the provision of Sections 362 and 364 of the *Criminal Procedure Code* that the Court may act suo moto and may be prompted by another person or body other than the convict to exercise its power of revision. Section 364(5) of the *Criminal Procedure Code* provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”
6. In the case *Martin Mavuti Kituyi v Republic* HCCR. Revision No. 27 of 2013 the court rendered itself as follows; “... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the *Criminal Procedure Code*; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”
7. Having personally approached this court to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364 (5) of the *Criminal Procedure Code*. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

DATED, SIGNED AND DELIVERED THIS 6TH DAY OF MARCH, 2025

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Ogutu

Applicant – Present in Person

