



**Ibrahim v Republic (Miscellaneous Criminal Application  
E005 of 2025) [2025] KEHC 6332 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 6332 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2025**

**JN ONYIEGO, J  
MARCH 20, 2025**

**BETWEEN**

**ALI ABDIWAHAB IBRAHIM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision application against the sentence delivered on 02-2-2022 by  
Hon. Maundu (CM) in S.O. Case number 22 of 2018 Garissa CM's Court)*

**RULING**

1. The applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the *Sexual Offences Act* No 3 of 2006. The statement of the offence read as follows: on the diverse dates of 14<sup>th</sup> and 15<sup>th</sup> of June 2018 at [Particulars Withheld] within Garissa town in Garissa County, he intentionally and unlawfully caused his penis to penetrate the vagina of MAS, a child aged 16 years.
2. Upon entering a plea of not guilty, the matter proceeded to full trial. After his conviction, he was sentenced to 18 years' imprisonment. Being dissatisfied with the finding of the trial court, he filed an appeal before the High Court in Criminal Appeal Case No 8 of 2022 at Garissa in which this court substituted the 18-year sentence with a 7-year sentence to run from the time when sentence was imposed.
3. He filed an application dated 23.11.2023 seeking review of his sentence for the court to consider the time already spent in remand custody, which application was dismissed.
4. He has filed the current application dated 31.01.2025 seeking the court to review his sentence and the pending period yet to be served and substitute the same with the time already served in prison.
5. The application in a nutshell is hinged on the fact that the applicant was arrested on 07.06.2018, tried and convicted on 02.02.2022. He was sentenced to 18 years' imprisonment but this court upon appeal,



- substituted the same with a 7-year sentence. It was his case that he has been in prison for a period over six years which according to him, is sufficient punishment and therefore, urges this court to suspend the remaining part of his sentence.
6. He pleaded with the court that he is a first offender and further, that he is remorseful for his actions. That this court ought to order that the 1 year 10 months pending be suspended. He urged that by this court allowing the application herein, the same would offer him an opportunity to regain his life and correct his mistakes. He thus urged this court to grant the prayers sought.
  7. The application was argued orally by the parties.
  8. The applicant reiterated the averments in his application and further urged that in the interest of justice, this court exercises its inherent power in allowing the prayers sought. He urged that this court finds his application merited and thereby release him under section 35(1) of the Penal Code.
  9. Mr. Owuor, the learned advocate for the prosecution in rebuttal opposed the applicant's prayer by urging that, this court previously determined an appeal by the applicant which led to a reduction of the applicant's sentence from 18 years to 7 years. He urged that this court is functus officio having reviewed the applicant's sentence in Criminal Appeal No E008 of 2022. As a consequence, counsel urged this court to dismiss the application for the same was in want of merit.
  10. I have considered the application together with the submissions by both parties. The only issue for determination is whether the order for resentencing can be granted.
  11. The applicant has urged this court to consider the time yet to be spent in completing his sentence by having regard to the time already spent in prison. The arguments were informed by the fact that he considered himself a reformed person after having undergone rehabilitation while in the prison. That the skills acquired in the prison were adequate enough to enable him rejoin the society and be a helpful citizen.
  12. It is trite that sentencing is a judicial exercise. It is not denied that upon the applicant being dissatisfied with the finding of the trial court, he appealed against the same before the High Court in Criminal Appeal Case No 8 of 2022 and the court substituted the 18-year sentence with a 7-year sentence to run from the time when sentence was imposed. It is trite that once a judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. It then follows that if the sentence is illegal or inappropriate the only court which can address the same is an appellate court.
  13. From the foregoing, I find that this court lacks the requisite jurisdiction to entertain the applicant in resentencing and as a consequence, the applicant's prayer for resentencing is hereby declined.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF MARCH 2025**

**J. N. ONYIEGO**

**JUDGE**

