



**Kipkotot v Republic (Miscellaneous Criminal Application  
E033 of 2024) [2025] KEHC 1042 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 1042 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E033 OF 2024**

**RB NGETICH, J**

**MARCH 4, 2025**

**BETWEEN**

**ELIJAH KOMOLIT KIPKOTOT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On the 23<sup>rd</sup> November 2017, the Appellant Elijah Komolit Kipkotot was convicted and sentenced to 20 years imprisonment for the offence of defilement contrary to Section 38(1) (3) of the [Sexual Offences Act](#). The particulars of the charge were that the applicant on the 2<sup>nd</sup> day of September, 2017 at [Particulars Withheld], Baringo North sub-county within Baringo county intentionally and unlawfully caused his penis to penetrate the vagina of N.K a girl aged 12 years.
2. The Applicant being dissatisfied with the decision of the trial court appealed to the High Court on both conviction and sentence and upon hearing and determination of the appeal, the High Court found no merit in the appeal and dismissed. The court further ordered that, pursuant to Section 333(2) of the [Criminal Procedure Code](#), the sentence of imprisonment for 20 years imposed against the Appellant by the trial court shall commence on 4<sup>th</sup> September, 2017, the date of his arraignment and remand awaiting trial as the accused did not obtain bail pending trial.
3. The Applicant has now approached this court with the application herein seeking a declaration that his rights under Article 50(2) (p) of [the constitution](#) were violated for being subjected to a mandatory sentence which had been rendered unconstitutional.
4. When the matter came up for hearing on the 12<sup>th</sup> November, 2024, the Applicant informed the court that his prayer is for reduction of sentence stating that he has been in remand for 8 years and is now remaining with 6 years. The court directed that a social inquiry report be filed.



## Social Inquiry Report

5. From social inquiry report, the applicant dropped out of school in class 3 so as to take care of the family cattle as a result of frequent stock theft and worked as a herder up to the time of his arrest. He is married with one child aged 9 years. The applicant's father and brother were interviewed and they urged this court to consider noncustodial sentence for the applicant and promise to participate in reintegration of the applicant to the community. The applicant states that while in prison he has obtained Grade III certificate in tailoring.
6. The victim's mother stated that the victim is currently pursuing tertiary education at the university and confirmed that the applicant's family went to seek forgiveness from the victim and her family and are not opposed to review of sentence.
7. The local administration attributed the offence to negative peer influence and lack of critical thinking by the applicant of the consequences of his actions. He is however of the view that now that the applicant has reformed and learnt a skill, they are not opposed to review of sentence as the community is not hostile towards the Applicant and are willing to welcome him back home.
8. In response, the prosecution counsel Ms. Bartilol submitted that this court is functus officio as the applicant filed an appeal which was dismissed on the 24<sup>th</sup> July, 2019 and taking into consideration the nature of the offence, she urged this court to disallow the application and let the applicant complete his sentence in prison.

## Determination

9. This application invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
10. It is not disputed that the Applicant had his appeal heard and determined by this Court. The Applicant having appealed to this Court and his appeal determined did not pursue further appeal to the Court of Appeal. The issue is whether this Court is possessed of jurisdiction to review its own order and sentence. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa -v- Jared Odoyo Okello & 3 others* [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;



d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

11. From the foregoing, in order for a party to successfully move a court to review its own decision or that of a court with coordinate jurisdiction, the party is required to meet conditions set out above. The Applicant has not demonstrated any of the grounds set by the Supreme Court as established in the above cited case. There is therefore no ground that allows this Court to re-engineer its own judgement. This court is therefore functus officio and the application is hereby dismissed.

12. Final Order: -

1. This application is hereby dismissed.
2. The applicant may seek review from the court of appeal.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 4<sup>TH</sup> DAY OF MARCH 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Ms. Bartilol for State.

Applicant present.

Court Assistant – Elvis/Momanyi.

