



**Issack v Republic (Miscellaneous Criminal Application
E012 of 2025) [2025] KEHC 6883 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2025**

JN ONYIEGO, J

MAY 22, 2025

BETWEEN

ABUKAR BASHIR ISSACK APPLICANT

AND

REPUBLIC RESPONDENT

(Being a revision application against the conviction and sentence of Hon. P.W.Wasike delivered on 21-05-2020 MCCR Case No. 36 of 2018 at SRM's Court at Mandera)

RULING

1. The applicant was charged with offence of defilement contrary to Section 8(1) (2) of the [Sexual Offences Act](#) No. 3 of 2006. Particulars being that on 10/1/208 at Bulla Karai, Mandera East Sub-County, Mandera County, he intentionally caused his penis to enter the anus of Abdimanaan Abdow Mohamed a boy child aged 2 years.
2. He also faced the alternative charge of committing indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006. Particulars being that on 10/1/208 at Bulla Karai, Mandera East Sub-County, Mandera County, he intentionally touched the anus of Abdimanaan Abdow Mohamed a boy child aged 2 years.
3. He pleaded not guilty and the matter was fully heard. He was found guilty, convicted and sentenced to serve life sentence.
4. Being dissatisfied with the decision, he lodged an appeal vide Criminal Appeal No. 2 of 2019. In its judgment dated 18th day of February, 2020, the court made the following orders;
 - i. Appeal is dismissed on conviction and same is upheld.



- ii. The life sentence is set aside and in lieu it is substituted with an order that that the appellant will be sentenced by the trial court at Mandera Law Courts. File to be sent to Mandera magistrate Court for sentencing.
5. The appellant was subsequently sentenced to serve 30 years imprisonment.
6. Undeterred, the appellant moved to this court vide a notice of motion dated 28th March, 2025 seeking leniency from the court by reviewing the sentence which in his view was harsh and that he is a young man who needs a chance in life.
7. Prosecution opposed the application arguing that the sentence imposed was reasonable and legal.
8. I have considered the application herein and the response thereof. This court is being asked to revisit the issue of sentence after having dealt with it on appeal. The revision application is now pleaded in the format of mitigation.
9. The law governing revision in a criminal case is section 362 and 364 of the [CPC](#). Section 362 and 364 provides as follows;

“ 362. Power of High Court to call for records

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.

364. Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —

- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the Prevention of Terrorism Act (Cap. 59B), the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A), the [Sexual Offences Act](#) (Cap. 63A) and the Counter-Trafficking in Persons Act (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his



intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) 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.
10. It is clear from the above provision that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe.
11. In the circumstances of this case, the court is being asked to exercise sympathy or mercy. That is not ground for revision. If it is on account of the sentence being excessive, the same is spent as it was dealt with on appeal. In a nut shell, it is my finding that the Application is not merited hence the same is dismissed.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

