



**CMN v Republic (Criminal Revision E223 of 2024)
[2025] KEHC 9392 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E223 OF 2024**

TM MATHEKA, J

JUNE 12, 2025

BETWEEN

CMN APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. The applicant has brought an application under Article 50(2)(p) and 165(6) of the Constitution, 2010, Sections 362 and 333(2) of the Criminal Procedure Code, 2019)
2. He seeks orders that the honourable court be pleased to revise the sentence meted upon him and consider the period served in remand custody pending the hearing and disposal of the trial and that he be exempted from paying costs as he is a pauper.
3. The grounds are on the face of the application and affidavit sworn by the applicant on 21/8/2024 and include inter alia; That the applicant was charged before Chief Magistrate’s Court in Makueni with the offence of incest contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006 vide Criminal Case Number 691 of 2015; That the applicant was tried, convicted and sentenced to serve twenty (20) years imprisonment; That the trial magistrate during sentencing failed to consider the time spent by the applicant while in remand during the pendency of the hearing of the suit; That the applicant had been remanded at Makueni Remand for three (3) years; That the applicant decided not to pursue appeal and seek for sentence revision before this honourable court. (emphasis mine)
4. I have perused the lower court file. The applicant was charged with Incest by male person contrary to section 20(1) of the sexual offences Act No. 3 of 2006. The particulars are that on the 13th day of November, 2015 at [Particulars withheld] Village Ukia Location in Makueni District within Makueni County intentionally and unlawfully caused his penis to penetrate the vagina of MM who was to



his knowledge his daughter aged 8 years. In the Alternative Charge he was charged with committing indecent act with a child contrary to section 11 (1) of the [sexual offences Act](#) No. 3 of 2006.

The particulars are that on the 13th day of November, 2015 at [Particulars withheld] Village, Ukia Location in Makueni District within Makueni County, intentionally caused his penis to touch the vagina of MM.

1. The record shows that he was arrested on 13/11/2015, tried convicted and sentenced on 25/10/2018.
2. I found that his deposition that he did not file an appeal from the conviction and sentence was not true - he filed Makueni HCCRA 32/2019. It was dismissed on 11/10/2019.
3. In the Judgment on the first appeal the learned Judge held:
The appeal is dismissed, conviction is affirmed, and sentence confirmed.
 1. That meant that whatever it is that the lower court had done was upheld by the High Court.
 2. I am aware that he may also have meant that he had chosen not to file appeal in the Court of Appeal instead choosing to come back here for review.
 3. The revision Jurisdiction granted to this Court by Article 165(6) of the [Constitution](#) applies to the subordinate court, not the court's own conviction and sentence.
 4. The applicant's only recourse is in the Court of Appeal .
 5. The application is untenable and is dismissed.

Order be served upon the Officer in Charge Makueni GK Prison for Compliance.

DATED, SIGNED AND DELIVERED VIA CTS THIS 12TH MAY 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2025-05-12 17:35:59

