



**Kogo alias Ronoh v Republic (Criminal Revision E075 of 2023)
[2025] KEHC 7815 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E075 OF 2023
RN NYAKUNDI, J
JUNE 4, 2025**

BETWEEN

KELVIN KOGO ALIAS RONOH PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 21th day of March 2023 seeking the following orders:
 - i. That application be certified as urgent and service be dispensed with first instant
 - ii. That the applicant approaches this honorable court to exercise its constitutional powers under article 165 (6) of *the constitution* of Kenya 2010 in reliance to section 362, 364 and 365 of the CPC
 - iii. That may this honorable court be pleased to call and examine the record of the trial court for purpose of satisfying itself as to the provisions of article 50(2)(q)
 - iv. That the applicant prays for stay way order pending the trial for this application to be heard and determined
2. It is further annexed by an affidavit sworn by the said Kelvin Kogo Alias Ronoh which states as follows:-
 - i. That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit
 - ii. That I was charged for the offence of defilement c/sec 8(1) as read with 8(2) of the *sexual offences act* No. 3 of 2006 which was later amended to rape c/sec 4 SOA no. 3 of 2006
 - iii. That the trial has already commenced and party heard
 - iv. That I am not represented since I cannot afford to pay legal fee



- v. That my rights under article 50(2)(b) has been denied and violated
- vi. That I am approaching this honorable court to exercise its constitutional powers under article 165(6) of *the constitution* of Kenya 2010 in reliance to section 362, 364 and 365 of the CPC
 1. That more grounds will be adduced at the hearing of this application which I wish to be present
 2. That what I have deponed therein is true and correct to the best of my knowledge, belief and understanding sources of my information
 1. The applicant was tried, convicted and sentenced to 20 years imprisonment for the offence;
 - a. Gang defilement contrary to section 10 of the *Sexual Offences Act* no. 3 of 2006
 - b. Particular of the offence on the night of 14th March 2022 at Kuinet 5FT area in Soy sub-location within Uasin Gishu county in association with others not before court intentionally and unlawfully cause his penis to penetrate the vagina of Z.J a child aged 17 years
 3. This application is brought under section 362 as read with 364 of the CPC. The object of revisional jurisdiction within the scope of these provisions is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but merely indicative. Each case would have to be determined on its own merits. Another well- accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner.
 4. There has to be well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. See: Amit Kapoor vs Ramesh Chander, (2012) 9 SCC 460
 5. It is therefore trite that the for this court to review the sentence imposed by the trial court, the applicant must satisfy besides the above guidelines the following key principles:
 - a. that the decision was in any way unauthorized or contrary to law;
 - b. excess of jurisdiction;
 - c. failure to satisfy or observe conditions or procedures required by law;
 - d. breach of the principles of natural justice;
 - e. unreasonable, irregular or improper exercise of discretion;
 - f. abuse of power



- g. fraud, bad faith, improper purpose or irrelevant consideration;
 - h. acting on instructions from an unauthorized person;
 - i. conflict with the policy of an Act;
 - j. error of law, whether or not apparent on the face of the record;
 - k. absence of evidence on which a finding or assumption of fact could reasonably be based;
 - l. breach of or omission to perform a duty
 - m. deprivation of a legitimate expectation;
 - n. a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or
 - o. an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power
6. This application on review of sentence lacks merits and it is good for dismissal
7. It is ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF JUNE 2025

.....

R. NYAKUNDI
JUDGE

