



REPUBLIC OF KENYA



KENYA LAW
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**Gikaru v Republic (Criminal Revision E029 of 2024)
[2025] KEHC 10292 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E029 OF 2024**

TW OUYA, J

JULY 17, 2025

BETWEEN

REUBEN KIRERU GIKARU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Reuben Kireru Gikaru, approached this court vide an undated Notice of Motion filed on 8th February, 2024, seeking a review of the ten (10) years imprisonment sentence imposed on him by the Senior Principal Magistrate's court at Kangema, in Sexual offences case no. 34 of 2019.
2. The applicant also sought in his application, that the sentence of two (2) years imprisonment imposed on him by Hon. P. M. Kiama in Criminal case 462 of 2020, for the offence of conspiracy to defeat justice should run concurrently with the sentence imposed on him in Sexual offences case no. 34 of 2019.
3. The background of the case as can be ascertained from the records of the trial court, is that the applicant, was charged and convicted of the offence of defilement contrary to section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act*.
4. The particulars of the offence allege that between the 1st and 6th day of September 2019, at Kasarani sub-county, within Nairobi county, the applicant intentionally and unlawfully caused his penis to penetrate the vagina of SWM a minor aged 16 years.
5. The application is anchored on the grounds stated on the face of the motion and in the depositions made in the applicants supporting affidavit. In brief, the applicant avers that the sentence imposed on him by the trial court was harsh and excessive as such, the same should be reviewed by this court.



6. The application was opposed by Mr. Mwangi, learned prosecution counsel. In his brief oral submissions before this court, Mr. Mwangi contended that the sentence of 10 years imprisonment by the trial court should not be interfered with, but should remain as is. Regarding the prayer by the applicant that his sentence of 2 years for the offence of conspiracy to defeat justice should run concurrently with the sentence of 10 years imprisonment, Mr. Mwangi submitted that sentences emanating from two different courts cannot be consolidated.
7. I have duly considered the application and the brief oral submissions made by the learned prosecution counsel. I have also read the record of the trial court. Having done so, I find that the present application invokes the revisionary jurisdiction of the high court as provided for under Section 362 of the Criminal Procedure Code (CPC) as read with section 364 of the said Act.
8. As per Section 362 of the Criminal Procedure Code, the High Court is empowered to call for and examine the record of the lower court in criminal proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order made by the trial court or the regularity of any proceedings before the trial court.
9. The said provision of law stipulates as follows:

“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.”
10. That being said, it is trite that sentencing is at the discretion of the trial court and this court when exercising its supervisory jurisdiction can only interfere with the sentence imposed, if it is satisfied that it was illegal or that when passing the impugned sentence, the trial court applied wrong legal principles or considered extraneous factors or failed to consider relevant ones.
11. This position was reiterated by the Court of Appeal, in Bernard Kimani Gacheru versus Republic (2002) eKLR; as follows: “It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”
12. In this case, as stated herein above, the applicant was convicted of the offence of defiling a minor aged 16 years. The penalty for the said offence as prescribed in Section 8 (4) of the Sexual Offences Act, is a mandatory minimum sentence of fifteen (15) years Imprisonment.
13. The learned trial magistrate in this case, sentenced the applicant to a term of ten (10) years, which is below the minimum sentence of 15 years imprisonment as provided for by statute.
14. I have however noted that the applicant was sentenced on 17th February, 2021, and while sentencing the applicant, the learned trial magistrate relied on the supreme court case of Francis Karioko Muruatetu & another versus Republic (2016), before the said court clarified that its decision applied only in respect to sentences of murder, I shall therefore not interfere with the said sentence by enhancing the same.



15. From my perusal of the trial court, there is no indication that when passing sentence, the learned trial magistrate made any error of law or misdirected himself in any way. It is therefore my finding that the applicant has failed to establish any basis to justify intervention of this court by way of revision.
16. Regarding the applicant's prayer that his sentence of 2 years imprisonment for the offence of conspiracy to defeat justice and interfere with witnesses should run concurrently with his ten years sentence for the offence of defilement; I am of the view that the said orders cannot be granted by this court, considering first that the records of the trial court in that case are not before this court for consideration.
17. Furthermore, aside from the fact that the two cases were handled by different courts, there is no indication that the offence of conspiracy to defeat justice and interfere with witnesses was committed in the same transaction as the offence of defilement. The term same transaction was defined by the court of appeal, in the case of William Kimani Ndichu versus Republic, Criminal Appeal no.111 of 2013; as follows:
18. "The former Court of Appeal has defined the phrase "same transaction" in *Rex v Saidi Nsabuga s/o Juma and another* (1941) 8 EACA 81 and revisited it again in *Nathani v R* (1965) EA 777, where the court said that the proper construction of the phrase "same transaction" is that: "If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose or by the relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction."
19. For this court to order that the 2 years sentence for the offence of conspiracy to defeat justice and interfere with witnesses, should run concurrently with the ten (10) year sentence for the offence of defilement, the applicant needed to show that he committed the said offences at the same time in a single act or transaction, which he failed to do, as such, this court cannot order that the said sentences should run concurrently.
20. Flowing from the foregoing, I am of the considered view that the present application lacks merit and should be dismissed.
21. Final Orders:
 - i. Application dismissed
 - ii. No orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH JULY 2025.

HON. T. W. Ouya

JUDGE

For Appellant.....Reuben Kireru Gikaru (Present at Nyeri Maximum Prison)

For Respondent.....P Mwangi

Court Assistant.....Brian

