



**Kadiche v Republic (Criminal Revision E119 of 2024)
[2025] KEHC 9592 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E119 OF 2024
RN NYAKUNDI, J
JULY 4, 2025**

BETWEEN

ISAAC KADICHE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in which the applicant seeks orders as follows:
 - a. Spent.
 - b. That I am the applicant herein seeking for sentence review in criminal case no. 4226 of 2010 for the offence of defilement contrary to section 8(1) as read with 8(2) of the [sexual offences act](#) no. 3 of 2006 in criminal case number 4226 of 2010 chief magistrates court at Eldoret and sentenced to life sentence
 - c. That high court has competent jurisdiction to hear and determine this application under article 165(3)(b) of the [constitution of Kenya](#) 2010
2. The application is supported by the annexed affidavit of the applicant who deposed as hereunder:
 - a. That, I was arrested, charged, convicted and sentenced to life sentence for the offence of defilement contrary to section 8(1) as read with 8(2) of the [sexual offences act](#) no. 3 of 2006.
 - b. That, my first appeal to the high court was dismissed in its entirety vide HCCRA no. 46 of 2011 at Eldoret prompting me the appellant lodge this application on sentence review.
 - c. That, I have no pending appeal to the Court of Appeal thus my application for resentencing.
 - d. That, under the [constitution of Kenya](#) under article 50(2)(p) (q) an applicant has a right to benefit from the least severe sentence and have his sentence reviewed.



- e. That, a life sentence contravenes section 216 and 389 of the [criminal procedure codes](#) on mitigation and the values of sentencing as in the [sentence policy guidelines](#) 2016 paragraph 4;1
- f. That, under the provisions of the [constitution of Kenya](#) 2010 and practice and procedure rules 2010 this court has power to hear and determine infringements of fundamental rights and award remedies

Decision

3. This application has been filed pursuant to Article 50(2) (p) (q) & (6) (a) (b) of the [constitution](#) as read with section 362 and 364 of the [CPC](#). In so far as the revisional jurisdiction is concerned this court can exercise it where there is illegality, impropriety, irregularity or incorrectness of the order complained of and issued by an inferior court. The supreme court of India in [Girish Kumar Suneja v CBI](#), AIR 2017 SC 3620 made the following observations on equivalent provisions similar to our section 362 and 364 of the [CPC](#) on revisional jurisdiction and ruled that:

“Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.”

4. The scope of interference by this court as against the orders of an inferior tribunal or subordinate court as denoted from the various superior court can be summarized as follows:
 - i. That findings of fact recorded by lower court on an evidence not available on record
 - ii. That material evidence, which could have reflected on the merits and the decisions of the case, has been ignored by the lower court
 - iii. That finding of fact recorded on an evidence not admissible
 - iv. That material evidence discarded by treating it as inadmissible.
 - v. That finding of fact being perverse in terms of law
 - vi. However well disturbing the findings of fact recorded by the lower court, the revisional court would not proceed to appreciate or re-appreciate the evidence itself

5. In the case of [Amit Kapoor v Ramesh Chander](#), [2012] 9 SCC 460 (paras 12 & 13) provides that:

“The object of the provisions of revisions in any criminal statute with similar provisions like our criminal procedure code in terms of section 362 and 364 is to set right a patent defect or an error of jurisdiction of 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 of judicial discretion is exercised arbitrarily or perversely.”

6. The impugned order complained of is about review of sentence of about 5 years. Unfortunately for the applicant he has not met the criteria set out under section 362 and 364 of the [CPC](#). The application stands dismissed.



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

R. NYAKUNDI

JUDGE

Representation

M/s Sidi for the State

