



REPUBLIC OF KENYA



KENYA LAW
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**Karigi v Republic (Criminal Revision E113 of 2024)
[2025] KEHC 9525 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E113 OF 2024
FN MUCHEMI, J
JULY 3, 2025**

BETWEEN

PAUL KAMAU KARIGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is undated and seeks for orders of review of sentence on grounds that he has reformed while in prison.
2. The applicant was convicted on his own plea of guilty in Gatundu CM in Criminal Case (S. O.) No. E025 of 2021 with the offence of attempted defilement contrary to Section 9(1) as read with Section (2) of the [Sexual Offences Act](#) and was sentenced to serve fifteen (15) years imprisonment.
3. The applicant states that he is remorseful and is a first-time offender. He therefore, seeks for the court's leniency in reviewing his sentence downwards. The applicant argues that the sentence meted against him is harsh and excessive. He further argues that he was mentally ill during trial and could cope with the criminal case he was facing and the trial magistrate failed to observe the same. The applicant avers that he is currently mentally fit after prison facilitated for his mental treatment and he is ready to join society, should this court review his sentence.
4. The respondent filed grounds of opposition dated 26th May 2025 and states that the applicant was charged with the offence of attempted defilement contrary to Section 9(1) as read with 9(2) of the [Sexual Offences Act](#) and sentenced to fifteen years imprisonment. The respondent argues that the applicant has not argued or suggested that the sentence passed is manifestly harsh and excessive, that the sentence passed was illegal or improper or that the trial court acted on wrong principles or omitted relevant factors or took into account irrelevant factors in sentencing or that the proceedings were



irregular or in violation of his right or fundamental freedom. The applicant only made generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warranting upsetting the sentence imposed by the trial court.

5. The respondent states that the applicant was not remorseful as he stated that he had no mitigations.
6. The respondent states that both mitigating and aggravating circumstances were considered but the aggravating circumstances outweighed the mitigating circumstances hence the sentence by the trial court as the complainant was only 6 years old.
7. The respondent states that the sentence passed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances. It was further stated that the offence which the applicant was found guilty of is a felony which attracts a prison sentence of a term which should not be less than ten years.
8. Parties put in written submissions.

The Applicant's Submissions.

9. The applicant submits that he pleaded guilty to the charges referred to him on the first instance and thus the court ought to award him absolute discharge bearing in mind that he saved court time and resources.
10. The applicant submits that he took his plea of guilty virtually while he was mentally challenged. The applicant further submits that the trial magistrate failed to notice his state of mind and denied him time to reflect on the charges read to him but proceeded to convict and sentence him thus contravening his rights pursuant to Article 50(2) of the *Constitution*.
11. The applicant states that he is a middle aged man and has a young family which he can take care of currently as he is mentally fit. The applicant further states that he is a first time offender, he is remorseful and seeks the court's leniency.

The Respondent's Submissions.

12. The respondent reiterates what she has deponed in her affidavit and submits that the instant application is an abuse of the court process and ought to be dismissed.

The Law.

13. The High Court's power of revision is set out in Article 165 (6) and (7) which provides:-
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
14. Section 362 of the *Criminal Procedure Code* provides:-

The High Court may call 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.



15. Section 364(1) of the *Criminal Procedure Code* provides:-

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 his 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 section 354, 357 and 358, and may enhance sentence;
 - b. In the case of any other order other than an order of acquittal alter or reverse the order.
- (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.

16. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of *Joseph Nduvi Mbuvi vs Republic* [2019] eKLR:-

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

17. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.

18. Section 362 of the *Criminal Procedure Code* addresses cases for revision where the magistrate has made a mistake, irregularity or illegality. The High Court has power to correct such misdoings by giving the appropriate orders in an application for revision.

19. The applicant has come to this Honourable court by way of review provided for under Article 50(2) of the *Constitution*. It provides:-

- (2) Every accused person has the right to a fair trial, which includes the right:-
 - (q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.

20. The applicant herein was convicted on his own plea of guilty for the offence of attempted defilement by the trial court in Gatundu CM Criminal Case (SO) No. E025 of 2021 and sentenced to serve 15 years imprisonment. The applicant argues that he was mentally unfit when he took plea and he is currently mentally stable as he underwent treatment while in prison. It is noted that the charge and facts of the case were read to him and he stated that the facts were correct and he declined to give any mitigation. The trial court noted that the applicant was not remorseful as he had nothing to state during mitigation.



21. having noted that the applicant did not say anything in mitigation before sentence, it is doubtful that the applicant was mentally ill. If the allegation was true, the accused would have raised it during mitigation or raised it during the trial. The applicant attached treatments notes from Gatundu District Hospital which have nothing to do with mental illness. No psychiatric report has been attached to support the said allegations. It then follows that the issue of mental illness is an afterthought and has no impact in this application.
22. The applicant states that he has reformed for the time he has been in prison. He has not cited the law upon which he is relying on that would entitle him to be released. I am of the considered view that the said grounds have no relevance in review of sentence. The applicant has the option of writing to the Presidential Committee of Mercy which would consider such grounds among other issues as the prison authorities may recommend.
23. The applicant further argues that the sentence is harsh and excessive. Section 9(2) of the *Sexual Offences Act* provides:-

A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.
24. On perusal of the trial court record, the learned magistrate considered the nature of the offence and the age of the victim and noted that the offence was serious and negatively impacted on the child of tender years. The learned magistrate then proceeded to sentence the applicant to fifteen years imprisonment. It is my considered view that the sentence is lawful and reasonable considering the minor was aged six years.
25. Consequently, I find no merit in this Application and it is hereby dismissed.
26. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF JULY 2025.

**F. MUCHEMI
JUDGE**

