



**Ochoro v Republic (Miscellaneous Criminal Application
E104 of 2024) [2025] KEHC 10221 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E104 OF 2024**

RN NYAKUNDI, J

JULY 16, 2025

BETWEEN

JACOB ODHIAMBO OCHORO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before me for determination is an undated Notice of Motion Application seeking sentence review brought pursuant to Article 22(1), 23(1), 25 (a)(c), 27(1)(2), 28, 29(a)(f), 40, 50(2) (p)(q), 159(2)(a), 165(2)(a) of the *Constitution* of Kenya 2010 in which the Applicant is seeking the following orders:
 - a. Spent
 - b. Reduction of sentence to a lesser term in compliance with the ruling of this court in Petition No. E017 of 2021 at Machakos and consolidated petition no. 97 of 2021 at Mombasa.
2. The Application is based on the grounds on the face of it among others: that the Applicant is seeking for sentence review under Article 50(2)(p), 165(3)(a)(d) and 258(1) of the *Constitution* of Kenya 2010 and the Applicant beg to be present during the hearing and final determination of this application.
3. The Application is supported by the annexed affidavit dated 19th August 2024 sworn by Jacob Odhiambo Ochoro, the Applicant herein in which he avers as follows;
 - a. That I was charged, tried, convicted and sentenced to serve 25 years' imprisonment for the offence of defilement c/sec 8(1) and 8(2) of the *SOA* No. 3 of 2006.
 - b. That I am seeking sentence review in accordance to Article 27(1)(2)(4), 22(1), 23(1), 25(c), 50(1)(2) and 51(1)(c) of the *Constitution*



- c. That I am a first offender, remorseful, repentant and reformed and rehabilitated person and I have learnt the incarceration and pray to be allowed by the Honourable Court to play role model in the society.
- d. That may this Honourable Court be pleased to grant me a fair opportunity to argue my petition before the court.

Analysis and Determination

4. Upon consideration of the application, the following issue arises for determination; Whether the court should review the applicant's sentence

Whether the Court Should Review the Applicant's Sentence

5. It is trite law that jurisdiction is everything. Without it, the court cannot adjudicate over a matter. See the famous words of Nyarangi, JA in the case of *The Owners of Motor Vessel Lilian "S" vs Caltex Oil (Kenya) Ltd* [1989] KLR 1 at page 14:

“Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending the evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

6. The Supreme Court of Kenya in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others*, Application No 2 of 2011 rendered itself as follows:

“A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

7. The High Courts' revisionary jurisdiction is governed by section 364 of the Criminal Procedure Code which states as follows;

- (1) 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 its 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 sections 354, 357 and 358, and may enhance the sentence;
 - b. In the case of any other order other than an order of acquittal, alter or reverse the order.
 - c. In proceedings under section 203 or 296(2) of the Penal Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.



- (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:
- Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
8. I take note that the Applicant herein was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006 in Eldoret CMC Criminal (Sexual Offence) Case No. E084 of 2019. The particulars were that on 13/10/2019, in Kapseret sub-County, within Uasin Gishu County, he defiled a 5 years old girl. He was convicted and sentenced to serve 25 years in prison. The Applicant deponed that he is a first offender, remorseful, repentant and reformed and rehabilitated person and he has learnt the incarceration and pray to be allowed by the Honourable Court to play role model in the society.
9. The applicant had already filed a Miscellaneous Criminal Application No. E019 of 2023 in which the session Judge noted as follows,
- “4. The State (Respondent) did not file a formal Response but Ms. Okok, Prosecution Counsel opted to address the Court orally. In her address, she submitted that the Magistrate’s Court jailed the Applicant for 25 years on 28/07/2022, that the Applicant filed an Appeal to this Court, namely, Eldoret High Court Criminal Appeal No. E084 of 2022, that the Appeal was only on sentence and it was dismissed on 16/02/2023 by Hon. Lady Justice J. Mon’gare who upheld the sentence as proportionate. Ms. Okok submitted that in his Judgment, the trial Magistrate expressly stated that he had considered the period spent in custody and that Hon. Lady Justice Mon’gare having already determined the same and being a Judge of concurrent jurisdiction, the Application is for dismissal.”
10. Moreover, the session Judge held as follows in the determination of the Application therein;
- “6. Upon perusing the record, I have established that indeed the Applicant filed Eldoret High Court Criminal Appeal No. E084 of 2022 in this very same Court in which he challenged the sentence of 25 years’ imprisonment imposed on him by the trial Court. The Applicant has in fact attached a copy of that Judgment to the instant Application. In the Appeal, he also raised the issue of Section 333(2) of the [Criminal Procedure Code](#) not having been considered by the trial Court in computation of the prison sentence imposed and also that he is a first offender, he is remorseful, repentant and rehabilitated. The grounds that he raised in the Appeal are therefore basically, word-for-word, the same that he has again raised in his instant Application



7. In reading out the sentence, the trial Magistrate, Hon. B. Kiptoo (SRM) stated as follows: “The offence is serious. The child is aged 5 years at the time of the offence. The children of this nature need to be protected. The provisions for a sentence of life imprisonment, the Superior Courts have handed down a decision against mandatory sentences. The spent (sic) in custody by the accused considered, his age factored in, the accused is hereby sentenced to serve 25 (Twenty-Five) years in prison. Right of Appeal 14 days”
8. On her part, in her Judgment in the Appeal, Mon’gare J made the following statements: “10. Therefore, upon considering the circumstances of the case, the grounds of appeal, the aggravating circumstances, the mitigation of the Appellant and the submissions of the parties, I find no reason to review the sentence meted out by the trial Court. The victim was a child of tender years and will be affected by the acts of the Appellant for the entirety of her life. It is my view that the sentence was commensurate with the offence committed and I find no reason to disturb the same. The appeal is dismissed. Orders accordingly.”
9. It is therefore clear that the question of computation and length of the sentence was raised on appeal before a Judge of equal jurisdiction presiding over this very Court and who conclusively dealt with and determined the same. In the circumstances, this Court is now functus officio and cannot purport to interrogate the decision of Mon’gare J.
10. The upshot of the foregoing is that the Application is without merit as the issues it purports to raise were finally and conclusively determined by a Judge of concurrent jurisdiction. If this Court was to interfere with the decision which conclusively dealt with the issue of sentence, such action would be tantamount to sitting on appeal on the decision of a Judge of equal standing, a position that is untenable in law.”
11. From the foregoing, this court cannot review the sentence once more as it would be tantamount to sitting on appeal on a decision of its own. I am guided by the persuasive decision of Hon L Njuguna in [*John Gichovi Muturi v Republic*](#) [2021] eKLR where she expressed herself as follows;

The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. This is because the rule of the thumb is that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves. The court which ought to deal with an issue arising out of the decision of this court is the Court of Appeal as it is the one with jurisdiction under Article 164(3) of the [*Constitution*](#) and Section 379(1) of the [*Criminal Procedure Code*](#). This is in appreciating the provisions of Article 50(2)(q) of the [*Constitution*](#) of Kenya 2010 which guarantees the right of a person if convicted, to appeal to, or apply for review by, a higher court as prescribed by the law.
12. Therefore, this court has no jurisdiction to entertain the application. The upshot of the foregoing is that the Application for resentencing is dismissed for want of merit.
13. It is so ordered

DATED, SIGNED AND PUBLISHED AT ELDORET THIS 16TH DAY OF JULY, 2025



.....

R. NYAKUNDI

JUDGE

Representation:

M/s Sidi for the state

