



**Famau v Republic (Miscellaneous Criminal Application E026 of 2025)
[2025] KEHC 13016 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2025
JN ONYIEGO, J
SEPTEMBER 22, 2025**

BETWEEN

YUSSUF IMAN FAMAU APPLICANT

AND

REPUBLIC RESPONDENT

(Being a revision application against the sentence of Hon.D.W.Mbuteti delivered on 10th December 2021 in sexual offence case No. E017 of 2020 in Garissa CM's court)

RULING

1. The appellant herein was arraigned before the Chief Magistrate's Court at Garissa in Sexual Offences Case No.17 of 2020 facing four counts: Count one, he was charged with defilement contrary to section 8(1)(3) of the Sexual Offences Act No. 3 of 2006. Particulars were that on 28.04.2020 at around 1600hrs within Kunaso area Madogo Location Tana North Sub county within Tana River county he intentionally and unlawfully did commit an act which caused his genital organ namely penis to penetrate the genital organ namely vagina of F.A. a girl aged 15 years.
2. He also faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006 with particulars being that on 28.04.2020 at around 1600hrs within Kunaso area Madogo Location Tana North Sub county within Tana River county he intentionally and unlawfully touched the vagina of F.A. a girl aged 15 years.
3. On Count two, he was charged with Assaulting a police officer contrary to section 103(A) of the National Police Service Act No. 11 of 2011 with particulars being that on 03.05.2020 at around 1539 at Adhele Area, Tana North sub county within Tana River county he assaulted No. 57412 PC Jirah Mtiki, a police officer who at the time of the said assault was acting in the due execution of his duty.
4. Count three, he was charged with assaulting a police officer contrary to section 103(A) of the National Police Service Act No. 11(A) of 2011. Particulars were that on 03.05.2020 at around 1539 hrs at



- Adhele Area, Tana north Sub county within Tana river County he assaulted No. 250991 PC Solomon Wanjohi, a police officer who at the time of the said assault was acting in the due execution of his duty.
5. Count four he was charged with resisting arrest contrary to section 254(b) of the Penal Code. Particulars were that, on the 03.05.2020 at about 1539 at Adhele Area, Tana North sub County within Tana River County he willfully resisted lawful arrest by No. 113799 PC Shadrack Kipchirchir No. 57412, PC Jirah Mtiki, PC Solomon Wanjohi, PC Baraka Mweu and PC Kioko Mwinzi, police officers who at the time of the said resistance were acting in the due execution of their duties.
 6. He pleaded not guilty to the said charges and the trial proceeded to full hearing. Upon being found guilty under Counts one and four, he was sentenced to serve 20 years imprisonment in respect of count 1 and then discharged in respect of count four.
 7. The appellant being aggrieved by the said conviction and sentence, filed on 17.12.2021 a petition of appeal on the grounds that; his conviction was not safe; his defence was not considered; the trial court declined to recuse himself and further, the sentence meted out by the trial court was excessive and harsh. He therefore prayed that the conviction by the trial court be quashed and the sentence herein set aside.
 8. Upon considering the appeal, the court upheld both the conviction and sentence. Un deterred, he moved to this court once again vide a notice of motion dated 18-06-2025 seeking review of his sentence on grounds that the new sentencing policy guidelines allow review of sentences; he has since reformed; he has suffered enough; he is remorseful; he has acquired specialized training while in prison hence needs an opportunity to practise the same.
 9. In response, prosecution counsel opposed the application arguing that the court is now functus officio.
 10. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“ 362. Power of High Court to call for records

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.

364. Powers of High Court on revision

- (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 Panel Code (Cap. 63), the Prevention of Terrorism Act (Cap. 59B), the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A), the Sexual Offences Act (Cap. 63A) and the Counter-Trafficking in Persons Act (Cap. 61), 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.

11. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Sianyoy Atembe vs Republic.

12. In a nutshell, I do not find any justifiable ground to warrant review. The application does not meet the threshold for review orders. Principally, the court is functus officio having already pronounced itself on the same subject matter. Accordingly, the application is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF SEPTEMBER 2025

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J. N. ONYIEGO
JUDGE

