



**Njeru v Republic (Criminal Revision E177 of 2025)
[2025] KEHC 13137 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E177 OF 2025
RM MWONGO, J
SEPTEMBER 24, 2025**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE
20(1-4), 21(1), 22 (1), 25 (D), 48, 51 (1-2), 165 (3) (A) (B) (D) (I) (II) (6) & (7), 258 AND
259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SENTENCE REVIEW UNDER ARTICLE 50(2)(Q) OF THE
CONSTITUTION AND SECTION 327 (2), 362 AND 364 OF THE CRIMINAL
PROCEDURE CODE AND OTHER ENABLING LAWS**

AND

IN THE MATTER ARISING FROM RUNYENJES MCSO E016 OF 2022

BETWEEN

MARTIN NYAGA NJERU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

The Charge

1. The applicant was charged with the offence of rape contrary to section 3(1)(a&c) of the *Sexual Offences Act* whose particular were that on 06th September 2022 at Embu East subcounty within Embu County, the applicant intentionally caused his penis to penetrate the vagina of BW by way of using threats.
2. The applicant pleaded not guilty and he was tried and convicted. he was sentenced to 10 years imprisonment. during sentencing, the trial court stated that the sentence would run from 25th June 2023 when bond was cancelled.



The Application

3. The applicant filed an undated notice of motion seeking that the court reviews his sentence since he has reformed and that the mandatory sentence imposed was declared unconstitutional. He premised his application on grounds that his mother is an aging and ailing widow who depends on him for sustenance. That he is also a husband and father of 2 children and one of them needs special care. That the victim forgave him and she visits him in prison. He stated that during his incarceration, he has acquired useful skills which have added value to his life. He urged the court to apply section 216 and 329 of the Criminal Procedure Code.

Grounds of Opposition

4. The respondent filed grounds of opposition stating that there is no wrong principle of law that ought to be revised through revision proceedings. The applicant had not demonstrated that the sentence meted out to him was illegal or erroneous.

Written Submissions

5. Through his submissions, the applicant challenged the prosecution's evidence and argued that the conviction was unsafe. He also stated that the period he spent in custody was not considered during sentencing. He relied on the cases of Ahmed Abolfathi Mohamed and another v Republic (2018) eKLR and Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others [2021] KEHC 13027 (KLR).
6. The respondent relied on section 362 and 366 of the Criminal Procedure Code and the cases of R v Joshua Gichuki Mwangi [2024] eKLR and Shadrack Kipkoech Kogo v R. Eldoret Criminal Appeal No.253 of 2003 and argued that the sentence imposed is legal and there is no reason to review the same.

Issue for Determination

7. The issue for determination is whether the court has jurisdiction to review the sentence.

Analysis and Determination

8. The revisionary power of the High Court is drawn from Article 167(6) & (7) of *the Constitution* 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 not 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.”

9. Section 362 of the Criminal Procedure Code provided as follows on the High Court's supervisory jurisdiction:

“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. Therefore, this court bears jurisdiction to determine the application at hand. The applicant was convicted and sentenced 10 years imprisonment for the offence of rape. He has not appealed against this decision but now he is seeking a downward review of the sentence.
11. The sentence imposed by the trial court is the mandatory minimum sentence under section 3(3) of the [Sexual Offences Act](#) under which the applicant was charged. It states:

“A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.”
12. The trial court considered the applicant’s mitigation when he brought up the fact that he has a young family that depends on him and he is also the caregiver for his ailing aged mother. It is, therefore, not true that the applicant’s mitigation was not considered before sentencing since the proceedings indicate that he was given a chance to mitigate, and that he did so.
13. In as much as the court has jurisdiction to entertain the revision application, the court’s hands are tied because of jurisprudence from the Supreme Court to the effect that the courts cannot review sentences that have been prescribed in mandatory terms by statute. Regarding the sentences prescribed under the [Sexual Offences Act](#), the apex court stated that for as long as the sentences remain constitutional, they should be applied as provided. In the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR), the Supreme Court held:

“We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is Parliament and not the Judiciary that sets the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in Statute, must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence is set in Statute, the Legislature has already determined the course, unless it is declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law. However, in the special circumstances of a declaration of unconstitutionality, the process is reversed.”
14. The Supreme Court reiterated its position in that case through its recent decisions in the cases of Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) and Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR). It held that until parliament reviews the sentences imposed in statute, the court has no mandate to review them.
15. Therefore, the trial court was right in imposing the sentence of 10 years imprisonment as provided in law.



Conclusion

16. On the same issue of sentencing, the applicant has argued that the trial court did not consider the time spent in custody in accordance to section 333(2) of the Criminal Procedure Code. On this, the trial Court's sentencing ruling indicates that the sentence runs from the date when the applicant's bond was cancelled. That is the date when he was placed under lawful custody. The trial Magistrate therefore applied section 333(2) of the Criminal Procedure Code in that regards.

Disposition

17. The application has no merit and is hereby dismissed.
18. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 24TH DAY OF SEPTEMBER, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

Applicant Present in Court

Miss Nyika for the Respondent

Francis Munyao - Court Assistant

