



**Nyongesa v Republic (Criminal Revision E146 of 2024)  
[2025] KEHC 13162 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13162 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E146 OF 2024  
WM KAGENDO., J  
SEPTEMBER 17, 2025**

**BETWEEN**

**SAMMY WAFULA NYONGESA ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

*(Revision of sentence in S.O Case No. 420 of 2016 at the Chief Magistrates  
Court Kwale on 6th October, 2017 by Hon P.K. Mutaii (RM) and  
H.C. Cr. Appeal No. 120 of 2019 at Mombasa on 21st October, 2021)*

**RULING**

1. By way of a Notice of Motion brought under Sec 333 (2) of the Criminal Procedure Code, the applicant moved the court for orders that his thirty (30) year sentence be reviewed and the period spent in remand custody be computed into the said sentence pursuant to the provisions of Section 333 (2) of the Criminal Procedure Code.
2. The background is that the applicant was charged, convicted and sentenced for the offense of defilement contrary to sec 8 (1) as read with Section 8 (2) of the SOA, and sentenced to thirty (30) years in prison.
3. The applicant appealed the decision in Mombasa H.C. Cr. Appeal No. 120 of 2019 where the same was deemed devoid of merit and accordingly dismissed.
4. The instant application is propped on grounds that the period the applicant spent in remand custody, specifically 1 year and 7 months was not computed in the thirty (30) year sentence, thus this court ought to invoke the provisions sec 333 (2) of the CPC in the sentence to be awarded pursuant to the authority in Vincent Sila Jona & 87 others vs Kenya Prison Service & 2 others (2021) KEHC 457 (KLR).



## Analysis and Determination

5. I have considered the application, noting that the same is not opposed by the respondent, subject to the confirmation of the time spent in custody. Indeed, Article 50 (2) (p) (q) of the COK gives the Court the general power to review the decisions of the subordinate courts;

...

“

“(2) if convicted, to appeal to, or apply for review by, a higher court as prescribed  
(q) by law.”

Equally, this court’s revisionary jurisdiction is provided for under Section 362 of the Criminal Procedure Code.

“362. 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.”

6. As provided above, the High Court can only undertake criminal revision of the decisions of a subordinate court and not of a superior court. Needless to reiterate, the applicant had previously appealed the trial court’s decision before this court, differently constituted which conviction and sentence was upheld.
7. In the applicant’s appeal *Sammy Wafula Nyongesa vs Republic Criminal Appeal 120 of 2019 [2021] KEHC 2742 (KLR) A. Ong’ijo J. held as follows;*
24. This court finds that the trial Magistrate properly weighed the evidence prosecution as against the appellants defence and arrived at the correct conclusion that the Appellant defiled the complainant.
- .....
25. On the issue of sentence, Section 8(1) as read with Section 8(2) of the Sexual Offence Act provides that a person who is found guilty shall be imprisoned for life. The Appellant was sentenced to serve 30 years imprisonment.
- .....
26. However following the guidelines issued by the Supreme Court on 6/7/2021 that the holding related to offence of murder specifically this court finds that the Appellant cannot benefit from the holding therein unless and until a petition is presented in respect to other offences that carries the death penalty and/or mandatory minimum penalties for consideration by the High Court as to their constitutionality in relation to courts discretion in sentencing.
27. The court will however restrain from enhancing the sentence and leave it at 30 years imprisonment. The upshot is that the appeal has no merit and is dismissed.
28. Orders accordingly. The Appellant has 14 days right of appeal.



8. From the foregoing the issue on sentencing was aptly considered by this court in the applicant's initial appeal, and any aggrievances, reservations and/or reviews on the said decision can only be considered by the Court of Appeal, which leave as a matter of right was granted thereto.
9. In the case of Daniel Otieno Oracha vs Republic (2019) eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-
10. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise...

...

Good governance demands that cases be handled procedurally in the right forum..."

11. Similar positions were held in Lawrence Kariuki Njeru v Republic [2017] KEHC 3304 (KLR), in John Kagunda Kariuki v Republic [2019] KEHC 5480 (KLR), and recently in WSC v Republic (Miscellaneous Criminal Application E013 of 2021) [2025] KEHC 192 (KLR) where the court held that;

This court has already determined the Applicant's Appeal and upheld his conviction and sentence. The Court of Appeal thereafter dismissed his Appeal. In as much as this court empathizes with the plight afflicting the Applicant's family, this court has no jurisdiction to resentence the Applicant."

12. The rule of the thumb is that courts in general cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction. The applicant's refuge currently lies before the Court of Appeal as it is bereft of jurisdiction to review the said sentence.
13. Accordingly, the application is hereby dismissed for want of jurisdiction. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025.**

**W.K. MICHENI**

**JUDGE**

In the presence of;

For the Applicant(...in Person....

For The Respondent...Mr Ngigi and Mr Sirima...

Court Assistant....Bebora...

**THE JUDICIARY OF KENYA.**

**MOMBASA HIGH COURT**

**HIGH COURT CRIMINAL**

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