



**Jommo v Republic (Miscellaneous Criminal Application
13 of 2020) [2024] KEHC 715 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION 13 OF 2020**

**PJO OTIENO, J
JANUARY 19, 2024**

BETWEEN

GEOFFREY MAKUTO JOMMO APPLICANT

AND

REPUBLIC RESPONDENT

*(Appeal against the conviction and sentence by a judgment
of (Musyoka J.) dated 17.01.2020, the appeal was dismissed)*

RULING

1. By a notice of motion filed in court on the 19.2.2023 the appellant seeks, by way of review, that the sentence meted against him by the trial court and upheld by the High court on appeal be reduced or that an alternative to imprisonment term be considered.
2. The only reasons advanced to ground that prayer is that mitigation offered was never considered just as the available alternative forms of sentence were ignored. The application invokes the court's jurisdiction under article 50 (2) of *the constitution*.
3. The application for revision was opposed by the prosecution which filed grounds of opposition and contended that the court lacks jurisdiction to revise its own order made by another judge; has become functus officio; that the applicant needed to approach the Court of Appeal by dint of article 164 (3) and section 37 a (1) of the *Criminal Procedure Code*; and lastly that the principles on resentencing enunciated in *Francis Muruadetu*¹ and the prevailing jurisprudence on the same do not apply but militate against the orders sought from being granted.
4. The record placed before the court reveals that the applicant was charged, tried and convicted for the offence of defilement of a minor aged 14 years and sentenced to serve an imprisonment term of 20 years.

¹ [2015] eKLR



He appealed against the conviction and sentenced and by a judgment of this court, (Musyoka J.) dated 17.01.2020, the appeal was dismissed, the conviction adjudged safe and sentence found commensurate with the offence.

5. No appeal was preferred against the decision and it stands. It is that same decision the applicant now wants upset by reduction of the term for imprisonment or imposition of an alternative sentence.
6. To this court, article 50 (10) q envisages appeals and review by higher courts against convictions. It doesn't permit the court to revisit its decision under the guise of review. Once the court delivered itself on the appeal and upheld the conviction and sentenced, the court became functus officio in the matter with the applicant having the undoubted right to challenge the decision at the Court of Appeal.
7. Having chosen not to appeal, he is deemed to have accepted this court's decision with the consequence that the court is devoid of jurisdiction to revisit its decision.
8. The application is adjudged to have no merit and is thus dismissed.
9. Let the court file be closed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF JANUARY, 2024

PATRICK J O OTIENO

JUDGE

In the presence of:

The Applicant in person

Ms. Chala for the Respondent

Court Assistant: Polycap

