



REPUBLIC OF KENYA



**Kimayai v Republic (Criminal Revision E045 of 2022)
[2024] KEHC 2502 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E045 OF 2022
RB NGETICH, J
MARCH 13, 2024**

BETWEEN

ELIJAH KIMAYAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant 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. The applicant was sentenced to serve life imprisonment.
2. The Applicant lodged an appeal vide application No. 228 of 2023 at Eldoret High Court and the same was dismissed and the Applicant later lodged an appeal at the court of Appeal Kenya vide application No. 85 of 2018 and the life sentence was reduced to 20 years on the 17th October, 2019 by Honourable Asike Makandia.
3. The Applicant has approached this court seeking for sentence review. He states that he spent 5 months in custody while undergoing his trial and his application is only on the review of sentence. The applicant states that since his incarceration, he has been able to acquire several skills and biblical courses and given a chance back to society, he will make use of the skills and biblical courses he has acquired in prison in nation the building and take care of his family. He says he has been in prison for 10 years 8 months and he is remaining with 3 years and one month. He prays to be allowed to serve the remaining 3 years one month while out of custody.
4. The prosecution through Ms. Ratemo opposed the application stating that the applicant filed an application at the High court in Eldoret which was dismissed on the 9th February, 2015. He filed appeal to the Court of Appeal which was delivered judgement on the 17th October, 2019 and the case was reported being Elijah Kaya Vs Republic [2019] eKLR where the court of appeal reduced the sentence to 20 years imprisonment and the court indicated that the sentence was to run from 28th November, 2013



being the date the trial court delivered its judgement and therefore this court does not have jurisdiction to pass a judgment of a sentence of a superior court and the application for revision should be dismissed.

Determination

5. I wish to consider whether this court has jurisdiction to review applicant's sentence. The law on jurisdiction was stated by the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others*, Application No. 2 of 2011 thus:

“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...”

6. It is not disputed that the Applicant had his appeal heard and determined by court of appeal. The court of appeal set aside life sentence and imposed 20 years imprisonment. He now seeks review of the sentence imposed by the court of appeal. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others [2017]* eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- (i) the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- (ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- (iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- (iv) the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

7. This court is empowered by Article 165(6) of *the Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides that 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.

8. The court of appeal being a Superior Court having made determination on this matter in respect to sentence, the option available for the applicant to approach the court of appeal for review if the circumstances listed in the supreme court case above exist.

9. In view of the above, this court has no jurisdiction to review the sentence imposed by the court of appeal.

10. Final orders: -

Applicant for review of sentence is hereby dismissed.



RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

* Applicant present.

* Ms Ratemo for State.

* Elvis/Sitienei, Court Assistant.

