



**Olekesio v Republic (Criminal Revision E081 of 2023)  
[2024] KEHC 2404 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2404 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E081 OF 2023  
RB NGETICH, J  
MARCH 6, 2024**

**BETWEEN**

**JOHN LEINO OLEKESIO ..... 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(4) of the Sexual offences Act No.3 of 2006. The particulars of the offence being that the Appellant between 1<sup>st</sup> April, 2021 and 30<sup>th</sup> April, 2021 at around 1500hours at Baringo South sub-county within Baringo County intentionally caused his penis to penetrate the vagina of GSN a child aged 16 years.
2. The Appellant faced an alternative charge of committing indecent act with a child contrary to section 11(1) of the Sexual offences Act No.3 of 2006, the particulars of the charge being that the Appellant between 1<sup>st</sup> April, 2021 and 30<sup>th</sup> April, 2021 at around 15hours at Baringo South Sub- County within Baringo County, intentionally touched the vagina, breast and buttocks of GSN a child aged 16 years with his hands.
3. By judgment delivered on the 16<sup>th</sup> February,2022 the applicant was convicted and sentenced him to serve 15 years imprisonment.
4. The Appellant having been aggrieved and dissatisfied with the decision of the trial court, he filed appeal before this court and by judgement delivered on the 4<sup>th</sup> day of October, the appeal was dismissed on both conviction and sentence but the court ordered that period served in remand be reduced from the sentence.
5. The Applicant now seeks review of sentence citing provisions of Article 165(3)(b) of the Constitution of Kenya, and that Article 50(2)(p)(q) of the Constitution arguing that he has a right to benefit from the least severe sentence and have his sentence reviewed. He states that a sentence of 15years



imprisonment contravenes section 216 and 389 of the Criminal Procedure Code on mitigation and values of sentencing as provided in the sentencing policy guidelines 2016 at paragraphs 4.1. The applicant states that he is seeking sentence review as there are people who were relying on him at home.

6. The prosecution through Ms Ratemo submitted that the Applicant filed appeal before this court which was dismissed in its entirety and he has admitted in his application that he is yet to file appeal before the court of appeal hence he has not exhausted appellate options thus this court lacks jurisdiction.

### **Determination**

7. It is not disputed that the Applicant had his appeal heard and determined by this Court. The Applicant having appealed to this Court and his appeal determined did not pursue further appeal to the Court of Appeal. The issue is whether this Court has jurisdiction to review its own order and sentence. 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:

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

8. Circumstances under which a court can review its own ruling, order or judgment have been set out in the above case. The applicant has not demonstrated any of the above circumstances. In my view, the applicant should either seek review or appeal before the court of appeal.

9. Final Orders: -

I decline to review sentence imposed by the trial court.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6<sup>TH</sup> DAY OF MARCH 2024.**

.....  
**RACHEL NGETICH**  
**JUDGE**

In the presence of:

Applicant present.

Ms Ratemo for State.



Kibet, Court Assistant.

