



**Chirchir v ODPP (Criminal Revision E001 of 2024)  
[2024] KEHC 3189 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL REVISION E001 OF 2024**

**RB NGETICH, J**

**APRIL 4, 2024**

**1.THE APPLICATION FOR REVIEW OF SENTENCE IS HEREBY DISMISSED.**

**2.APPLICANT TO SEEK REVIEW BEFORE THE COURT OF APPEAL.**

**BETWEEN**

**JOHN CHIRCHIR ..... APPLICANT**

**AND**

**ODPP ..... RESPONDENT**

**RULING**

1. By an undated application filed in court, the Applicant has moved this court seeking review of the sentence imposed against him in Eldama Ravine criminal case No. 997 of 2014 where he was charged with two counts of offences. Count 1 is the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No.3 of 2006.Count 2 is the offence of supplying drugs to procure an abortion contrary to Section 160 of the *Penal Code*. He was sentenced to serve 10 years imprisonment in Count 1 and 2 years imprisonment in Count 2 and the sentences were to run concurrently.
2. The applicant urges this court to invoke the provisions of Section 362, 363 and 364(b) of the *Criminal Procedure Code* and review the remaining period of his sentence to a non-custodial sentence. The application is supported by the affidavit of the Applicant.
3. The Applicant avers that being dissatisfied with the decision of the trial court, he filed a criminal appeal before the High court Criminal Appeal No. 47 of 2019 which he withdrew on the 21<sup>st</sup> December, 2022 and applied for review of sentence under Revision No. E001 of 2023 which was heard and determined.
4. When the matter came up for hearing on 1<sup>st</sup> March, 2024, the applicant informed the court that his prayer is for the remaining sentence to be translated to a non-custodial sentence. He stated that he has been in prison for 5 years and he is remaining with 1 year, 1 month and 10 days to complete his sentence.



5. The prosecution through Ms. Ratemo objected to the application on ground that that the applicant had previously filed revision No. 1 of 2023 which was determined by ruling delivered on 31<sup>st</sup> May, 2023 whereby this court dismissed prayer for revision of sentence but allowed period served in remand in computation of the sentence. She submitted that this court cannot therefore sit in decision it had decided and the Applicant should apply to the court of appeal.

### **Determination**

6. The application herein invokes the revisional jurisdiction of this court which gives the court powers in appropriate cases to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court is so satisfied, the law mandates this court to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the Criminal Procedure Code.
7. Both the Applicant and the Respondent have confirmed that the Applicant filed a similar application being Criminal Revision No. 1 of 2023 and there is therefore no dispute that the Applicant had his matter heard and determined by this Court. The issue is whether this court can entertain application for review again.
8. 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.”
9. In view of the above, in order for a party to successfully move a court to review its own decision or that of a court with coordinate jurisdiction, the party is required to meet conditions set out above. Upon considering this application, I find that the applicant has not demonstrated any of the above conditions. There is therefore no ground that allows this Court to re-engineer its own order. This court is functus officio and lacks jurisdiction to entertain the Applicant’s application having heard and determined this matter earlier. The application lacks merit and is hereby dismissed.

### **Final Orders: -**

10. ....
  1. The application for review of sentence is hereby dismissed.



2. Applicant to seek review before the court of appeal.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 4<sup>TH</sup> DAY OF APRIL 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

CA Sitienei.

Ms. Ratemo for state.

Applicant present in person.

