



**Onyango v Republic (Criminal Revision E043 of 2023)
[2024] KEHC 16643 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 16643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL REVISION E043 OF 2023
JL TAMAR, J
SEPTEMBER 24, 2024**

BETWEEN

ODHIAMBO ROBERT ONYANGO APPLICANT

AND

REPUBLIC RESPONDENT

(arising from criminal case number E021 of 2022 at the chief magistrate court at kajiado law courts judgement delivered on 19th December 2022 before Hon Gicheha -CM)

RULING

1. The applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No 3 of 2006 now Cap 63A Laws of Kenya. After the trial the learned magistrate found that the charge against the accused person was proved, convicted and sentenced him to serve 10 years imprisonment taking into account the period served in remand custody.
2. Dissatisfied with the decision of the magistrate court, the accused/applicant filed a homemade chamber summon application seeking as far as the court can ascertain, a revision of the sentence. The grounds upon which the revision is premised is among others that the magistrate convicted the applicant without considering that there were no proper investigations conducted by the investigating officer. The applicants further stated that he is unwell with renal complications and undergoing dialysis and also epileptic.
3. The application is opposed by the state. In its submission filed on 25th June 2024, the state contend that the applicant has not properly invoked the jurisdiction of this court to entertain the application and has not demonstrated that the sentence meted out by the magistrate court is illegal, incorrect or tainted with impropriety. It is further submitted that the application is in contravention of section 364(5) of the *Criminal Procedure Code* which provides that where an appeal lies from a sentence or order and no appeal has been filed, no proceedings by way of revision may be entertained.



4. The supervisory and revisionary jurisdiction of the High Court is provided in Article 165(6) (7) of the [Constitution](#) which provides;
 6. 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’
 7. ‘for purposes of clause 6, the High Court may call for the record of any proceedings before any subordinates’ court or person, body or authority referred to in clause (6) and may make any order or give any directions it considers appropriate to ensure the fair administration of justice’
5. The single issue for determination is whether the applicant has properly invoked the revisionary jurisdiction of the Court.
6. In an application for review under Article 165 of the [Constitution](#) and section 362 of the [Criminal Procedure Code](#), the main and dominant consideration for which the record of any criminal proceedings is called for, is to enable the court to satisfy itself as to correctness, legality and propriety of any finding, sentence or any order made by the subordinate court. It is intended as stated by Ondunga J in [Joseph Nduva Mbui v Republic](#) [2019] eKLR to correct manifest irregularities or illegalities either during the pendency of the proceedings or at the conclusion.
7. The applicant was convicted of the offence of defilement and sentence to 10 years imprisonment by the magistrate court. An accused person who is dissatisfied with both conviction and sentence imposed by the magistrate court ought to have filed an appeal as provided for by Law. The contention by the applicant that the magistrate found a conviction on evidence that was not properly investigated is a matter for appeal and not revision. That he chose to file a revision, then the applicant must bring himself within the principles that guide the exercise of revisionary jurisdiction of the court. The guiding principles were outlined by Nyakundi J in [Republic v Stephen Lemiso](#) [2018] to include;
 - a. Where the decision is grossly erroneous
 - b. Where there is no compliance with the law
 - c. Where the finding of fact affecting the decision is not based on evidence or as a result of misreading of the evidence on record
 - d. Where material evidence on the parties is not considered; and
 - e. Where the judicial discretion is exercised arbitrarily or perversely
8. I have looked at the record of the lower court and established that the applicant was charged and convicted under the section 8(1) as read with section 8(3) of the [Sexual Offences Act](#) Cap 63A. The punishment for the offence under sub-section 3 is a term of not less than twenty years. The applicant was sentence to serve 10 years imprisonment notwithstanding the fact that the law provides for a Mandatory minimum sentence under the Act. The state has not appealed against the sentence and I would leave at that.
9. Consequently, I find that the applicant has not established that the findings of the magistrate was tainted with irregularities, illegalities or arbitrariness as to call for the invocation of the revisionary jurisdiction of this court. The sentence meted out was legal and correct. The application for revision lacks merit and the same is dismissed.

DATED, AND DELIVERED AT KAJIADO THIS 24TH DAY OF SEPTEMBER 2024



JOHN.T. LOLWATAN
JUDGE

