



**Sheikh v Republic (Miscellaneous Criminal Application E023 of 2024)  
[2024] KEHC 11152 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11152 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2024  
JN ONYIEGO, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**ABDIFATAH ALI SHEIKH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was charged and found guilty of the offence of defilement contrary to section 8(1)(3) of the [Sexual Offences Act](#) No. 3 of 2006. He was subsequently found guilty and sentenced to 13 years' imprisonment.
2. Being aggrieved by the conviction and sentence, the applicant filed an appeal before this court, being High Court Criminal Appeal No. E026 of 2023 seeking to have his conviction quashed and sentence set aside. The appeal was in its entirety dismissed by S.N. Riechi J. on 17.05.2024.
3. The applicant has since approached this court once more seeking for a review of his sentence. He urged that he has been in prison for a period of one year and six months and has since undergone rehabilitation and therefore, deserving of a lesser sentence. It was his claim that for the reason that he left his education hanging, it was only mete that his sentence be reviewed to give him an opportunity to continue with his studies.
4. At the hearing of the application, the applicant urged this court to consider that being a first offender, the sentence meted out by the trial court was not only harsh but also undeserving. It was his case that while in custody, he has undertaken madrassa classes hence transformed.
5. On the other hand, Mr. Kihara, counsel for the respondent opposed the application arguing that this court is functus officio and therefore, the applicant should seek for his remedy elsewhere preferably the court of appeal.



6. I have considered the application herein and the oral submissions by both parties. The main issue for determination is whether this Honourable Court has jurisdiction to determine the application herein and issue the orders sought.
7. It is not in dispute that having been aggrieved by the judgement of the trial court the applicant appealed to this court and the appeal was heard and determined. In the application herein, the applicant now seeks for a more lenient sentence arguing that prior to the conviction and sentence, he was a student and would wish to be granted an opportunity to continue with his education. He also propagated an argument that given that he is the sole bread winner for his family, his sentence has caused lots of misery to the said family.
8. In *John Kamau Gachuba v Republic* [2019] eKLR, the Court held as follows;  

“... The applicant merely seeks the imposition of a more lenient sentence. This court has no revision jurisdiction over an appeal it has concluded. The applicant’s only option is to appeal in the Court of Appeal...”
9. The only remedy thus available to the applicant now lies elsewhere as this court does not have jurisdiction to determine the issues raised in the application. In my view, good order demands that once a court has fully pronounced itself and the litigant is not satisfied with the court’s determination, then the said litigant ought to appeal the impugned determination rather than move the very court to review its findings.
10. In the foregoing, the application herein is found to be destitute of any merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**J. N. ONYIEGO**

**JUDGE**

