



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Revision E89 of 2022)
[2023] KEHC 1841 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E89 OF 2022**

FR OLEL, J

FEBRUARY 16, 2023

BETWEEN

SILA KIBET MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Introduction

1. The petitioner was charged and convicted of the offence of Defilement contrary to section 8(1) as read with section 8(3) of the *sexual offences Act*. He was sentenced to a period of 25 years on August 10, 2021 by Hon Musiega (RM) The applicant subsequently filed this revision application which is undated but received by the deputy registrar on December 8, 2022 seeking review of his sentence, it be reduced and he be allowed to serve.
2. The applicant chose to rely on the affidavit supporting his application. In his submissions to court he pleaded that the court be pleased to reduce his sentence and he serves the remainder of his sentence.
3. The respondent, through Prosecution counsel Mr Alex Ndiema objected to this application and stated that the offence warranted a deterrent sentence and the sentence imposed was proper. They also relied on the submission filed in court on January 24, 2023

B. Analysis of Law

4. I have considered the application as well as the response by the Prosecution counsel.



5. The powers of the High court in revision are contained in Section 362 through to 366 of the *Criminal Procedure Code* (cap 75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.
6. What the High Court can do under its revision jurisdiction is stated under Section 364 of the *Criminal Procedure Code* Cap 5, which states as follows: -
 - “(1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may –
 - (a) In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
 - (b) In the case of any other order than an order of acquittal, alter or reverse the order.
 - (2) No order under this section shall be made to the prejudiced of an accused person unless he had had an opportunity of being heard either personally or through an advocate in his own defense. Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
 - (3) Where the sentence dealt with under this section has been passed by a Subordinate Court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
 - (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
 - (5) When an appeal arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”
7. Under this proceeding’s as aptly captured under section 364(5)” Where an appeal arises from the finding, sentence or order and no appeal is brought , no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”
8. The courts hands are tied. The applicant had a right of appeal but chose not to do so. By law this court is not allowed to entertain his application. This court lack jurisdiction to do so.
9. I find that this is not an application where the courts discretion can be exercised in favour of the applicant
10. I find this application is not merited and hereby dismiss the same.



11. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT MACHAKOS (VIRTUALLY) THIS 16TH DAY OF FEBRUARY, 2023.

FRANCIS RAYOLA

JUDGE

In the presence of: -

Mr Alex Ndiema for State

Applicant present

