

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL DIVISION

CRIMINAL REVISION NO. E125 OF 2021

(Criminal Case No. SO E014 of 2020 of the Chief Magistrate's Court at Nyeri)

JOHN NDUNGU MUTURI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. This is an application made by the Principal Magistrate Hon N. Kariuki vide a letter dated 30/06/2021 seeking a revision of the probation sentence under the provisions of Section 364 of the Criminal Procedure Code;
2. A brief outline of the case was that the accused person was charged and convicted with the offence of Defilement of a Child c/s 8(4) of the Sexual Offences Act; the particulars of the offence being that on diverse dates between 9/11/2020 and 12/11/2020 at [Particulars Withheld] Village of Karahiu Sub Location in Tetu Sub-County within Nyeri County the accused intentionally caused his member to penetrate the genital organ of **MWN** a child aged 17 years;
3. The accused person was convicted and sentenced to serve a five (5) year probation sentence; upon finding that the Probation Offenders Act at Section 5(1) provides that a probation order can only be for a period not exceeding three (3) years, the trial court filed the instant application for revision of the sentence vide the letter filed in court on 30/06/2021; the trial court submitted that the sentence imposed was irregular and urged this court to revise the sentence by invoking its supervisory powers under the provisions of Section 364 of the Criminal Procedure Code;
4. After reading the applicants letter the only issue for determination is whether the application for revision of the sentence is merited; the applicable law is found at Section 364 which provides that this court may alter or reverse the order on sentence imposed by the trial court;
5. In the light of the material placed before this court and the circumstances of the case this court is satisfied that the sentence imposed is irregular and that this is a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 of the Criminal Procedure Code.
6. The order dated 30/06/2021 made by the Hon. N. Kariuki (PM) in sentencing the applicant to a probation sentence of five (5) years is found to be irregular and warrants interference; the sentence is hereby set aside and substituted with a probation sentence of three (3) years.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NYERI THIS 1ST DAY OF JULY, 2021.

HON. A. MSHILA

JUDGE