



**Kurgat v Republic (Criminal Appeal E016 of 2022)
[2025] KECA 1534 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1534 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL E016 OF 2022
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
OCTOBER 3, 2025**

BETWEEN

DESMOND ROTICH KURGAT APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal against the conviction and sentence of the High Court at Kericho (A. Ongeri, J.) dated 9th March 2022 in High Court Criminal Application (Review) No.51 of 2022)

JUDGMENT

1. The appellant, Desmond Rotich Kurgat, was charged in Kericho Chief Magistrate’s Court Sexual Offence Case No. 98 of 2019 and convicted on his own plea of guilty with the offence of defilement contrary to section 8(1) as read of section 8(3) of the *Sexual Offences Act* and sentenced to 15 years imprisonment on 20th December 2019. The particulars of the charge were that on diverse dates between 5th September 2019 and 18th December 2019 at Mado sub location in Kericho East Sub County within Kericho County, the appellant intentionally caused his penis to penetrate the vagina of MC, a girl aged 13 years
2. Dissatisfied with that decision, the appellant filed Kericho High Court Criminal Appeal No. 42 of 2019 which was dismissed on 9th July 2021. The appellant then filed an application being Criminal Application (Revision) No. 51 of 2022 in which he invoked the High Court’s revisionary jurisdiction under sections 207, 362 and 364 of the Criminal Procedure Code and asked the court “to recall for (sic) and examine the record of the proceedings in Kericho Chief Magistrate’s Court Sexual Offence Case No. 98 of 2019 to satisfy itself as to the correctness, legality or propriety of the conviction and sentence of the subordinate Court issued on 20th December 2019” and that the court “be pleased to revise, set aside and/or quash the conviction and sentence of the Subordinate Court issued on 20th December 2019”.



3. On 9th August 2022, the High Court directed that:

“The appellant should seek leave to appeal out of time. Section 364(5) states that ‘when an appeal lies from a 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 would have appealed.’”

4. The instant appeal, which is against the said decision, is based on the grounds that the learned Judge erred in law and fact: and misdirected herself in holding that the appellant could not lodge an appeal against the conviction by the subordinate court on a plea of guilty; and misapprehended the appellant’s application in its entirety, the record of the subordinate court and the appellant’s submissions on the application; by contradicting her earlier decree dated 9th July 2021 in Kericho High Court Criminal Appeal No. 42 of 2019, in which she rightly held that the appellant had no right of appeal after his conviction on a plea of guilty; in failing to give effect to the appellant’s right to a fair hearing and access to justice; and in dismissing the appellant’s application for revision of the conviction and sentence of the subordinate court.

5. We heard this appeal on the Court’s virtual platform on 14th May 2025 during which the appellant appeared from Kericho Medium Prison and was represented by learned counsel, Mr Enock Kiptoo Losiamoi, while learned Senior Assistant Director of Public Prosecution, Mr Omutelema, appeared for the respondent. Both the appellant and Mr Omutelema relied entirely on their written submissions which we have considered.

6. The determination of this appeal revolves around the issue whether the High Court was properly seized of the application for revision. As we have stated above, the appeal arises from the decision of the High Court declining an application for review of a decision of the trial court where that decision had been unsuccessfully subjected to an appeal. In other words, can an appellant who has failed to successfully challenge a decision of the trial court on appeal, properly seek to challenge the same by way of revision? Section 364(5) of the Criminal Procedure Code provides that:

When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

7. The appellant pleaded guilty to the offence of defilement.

Section 379(3) of the Criminal Procedure Code provides that:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by the High Court, except as to the extent or legality of his sentence.

8. It is therefore clear that the appellant had a limited appellate window as regards the extent or legality of his sentence. Appreciating that position, the appellant did exercise that right. Section 364(5) of the Criminal Procedure Code expressly bars the appellant from seeking to review a decision which he not only ought to have appealed against but did appeal against, albeit unsuccessfully.

9. In the premises, we agree with the respondent that the High Court was stripped of the jurisdiction to entertain the application for revision and the appellant’s application was rightly dismissed.

10. One other reason why the application for revision was stillborn was that the appeal having been disallowed by the High Court, a revision of the trial court’s decision would have served no purpose as long as the decision disallowing the appeal remained intact.



11. We find no merit in this appeal which we hereby dismiss.

DATED AND DELIVERED AT NAKURU THIS 3RD DAY OF OCTOBER, 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

*I certify that this is the true copy of the original
signed*

Deputy Registrar

