



**SMM v Republic (Criminal Revision E0199 of 2024)
[2025] KEHC 14440 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E0199 OF 2024
TM MATHEKA, J
OCTOBER 8, 2025**

BETWEEN

SMM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with Incest by male person contrary to Section 20(1) of the [Sexual Offences Act](#) No. 3 of 2006. Particulars are on the 25th day of February, 2012 at [Particulars Withheld] village, Iuani Location in Makueni District within Makueni County intentionally and unlawfully caused penetration of his genital organs to FMM who is his sister aged 13 (thirteen) years.
2. Count II was Indecent Assault of a girl contrary to section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006, Particulars are that on the 25 the day of February, 2012 at [Particulars Withheld] village, Iuani Location in Makueni District within Makueni County unlawfully and indecently assaulted FMM by touching her private parts.
3. The applicant was found guilty committed at sentence to 20 years imprisonment on 6/12/2012 for Incest Contrary to Section 20(1) of the [Sexual Offences Act](#).
4. The applicant has brought this Notice of Motion (no date) under Article. 50(2) g of [the Constitution](#). He seeks :-
 1. That the Hon. court may be pleased to make an order to hear and determine this application and award priority basis.
 2. That the Hon. Court may be pleased to make an order to call upon the applicant from custody for hearing and orders.



3. That the Hon. Court may be pleased to make an order to invoke section 333(2) of the C.P.C hence the time spent in remand custody before conviction.
4. That the Hon. Court may be pleased to make an order and invoke section 35v of the Penal Code thus the entire time served since he was deprived his liberty and award discharge either absolute or conditional.

On the grounds that:-

1. The applicant avers that he is first offender remorseful is seeking the leniency of the court
 2. The applicant avers he is reformed, rehabilitated and equipped with skillful knowledge and is ready to rejoin the society as a law abiding citizen.
5. The application is supported by affidavit (no date) where he depones:-
1. That I am a male Kenyan Citizen of sound mind and duly competent to swear this affidavit.
 2. That vides Cr. Case No. 84 of 2012 at Makueni Law Court, I was arrested on 25/2/2012 and charged with offence of Incest C/S 20(1) of the SOA No. 3 of 2006 whereby I pleaded guilty as charged.
 3. That in respect of fore stated I was convicted and sentenced to serve 20 years imprisonment on 6/12/2012.
 4. That in respect of fore stated the time I spend in remand custody was not put into consideration during the sentencing exercise.
 5. That having been dissatisfied, I filed an appeal application at Machakos High Court Vide HCCRA No. 108 of 2013 which was dismissed entirely.
 6. That in respect of fore stated I now approach this court by way of revision of the sentence pursuant to section 333(2) of the C.P.C and section 35 of the penal code.
 7. That this Hon. Court has unlimited original jurisdiction and wide discretionary powers to deal with the matters prayed herein.
 8. That what deponent herein is true to the best of my knowledge, information and belief.
6. The applicant clearly states that he filed an appeal in the High Court which was dismissed.
7. The import of that is that this court upheld both the conviction and sentence meted out by the subordinate court.
8. The applicant cites Article 50(2)(g) of *the Constitution* which provides; that he has the right
To choose, and be represented by, an advocate, and to be informed of this right promptly;
9. He has not explained the relevance of this Article to the prayers that he is seeking .



10. Be that as it may the revisionary power of this court is anchored at Article 165 (6) & (7) of *the Constitution* – the court has power to revise orders of subordinate courts.
11. This court has no such jurisdiction over superior courts -
12. The applicant has recourse in the Court of Appeal or the Power of Mercy Committee provided for under Article 133 of *the Constitution*.
13. Application is declined.

DATED SIGNED AND DELIVERED THIS 8TH OCTOBER 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Applicant Present

Mr. Kazungu for State

