



**NTN v Republic (Miscellaneous Application E030 of 2025)
[2025] KEHC 15107 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
MISCELLANEOUS APPLICATION E030 OF 2025**

JN NJAGI, J

OCTOBER 24, 2025

BETWEEN

NTN APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was convicted and sentenced to serve thirty years imprisonment for the offence of incest contrary to Section 20[1] of the *Sexual Offences Act* No. 3 of 2006. His appeals to the High Court and the Court of Appeal were unsuccessful.
2. He has now approached this court with an application for review of sentence. The application is made pursuant to the provisions of section 364[1] and [b] of the *Criminal Procedure Code* which gives the High Court power to review orders from subordinate courts and in doing so may alter or reverse an order of the subordinate court.
3. The application is also made pursuant to section 354[3] [a] [iii] of the *Criminal Procedure Code* that grants the court power during an appeal to alter the nature of sentence.
4. The applicant filed submissions in which he stated that the prosecution did not provide a birth certificate to prove the age of the victim. That proof of age through documentary evidence remains the only determinant in imposition of sentence in sexual offence cases. That with such an error, he submitted that he is serving an unlawful sentence. That the 30 years sentence is excessive for being anchored on the wrong principles of law.
5. The applicant submitted that he was a first offender at the time that he was convicted. That he pleaded guilty to the charge. That he is now 70 years old. He urged the court to consider life expectancy vis a vis the sentence that was imposed on him. The applicant made reliance on the case of *Ali Abdalla Mwanza v Republic* [2018] eKLR where the appellant who was aged 36 years was sentenced to 40 years



imprisonment for murder and the court said that the sentence of 40 years was excessive in view of life expectancy. The court said that:

“In this case it is obvious to us if the appellant were to serve the entire forty years with above life expectancy in that case it would appear manifestly excessive.....in the circumstances we partially allow the appeal and substitute the sentence of forty years with term of twenty years from the date of conviction.”

6. The application for review of sentence is made pursuant to sections 364 of the Criminal Procedure Code which is based on the provisions of Section 362 of the CPC which allows the High Court to call for and examine any criminal proceeding 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 proceeding of any such subordinate court.
7. Pursuant to that, section 364 of the CPC grants the High Court power during revision to;
 - 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, one may enhance the sentence.
 - b. In the case of any other order other than an order for acquittal, alter or reverse the order.
8. I have considered the application. In my considered view, the provisions of section 362 and 364 of the *Criminal Procedure Code* apply in orders made by Subordinate Courts wherein the High Court may call for and examine records from the said courts so as to satisfy itself on the correctness, legality or propriety of any orders or finding made by such courts.
9. In this case the applicant made an appeal to the Court of Appeal. His appeal on the sentence was dismissed. This court cannot review a sentence upheld by the Court of Appeal. The authority cited by the Applicant does not apply in this case as the order therein was made by the Court of Appeal during an appeal. It was not made during review of sentence. The applicant should have brought up the argument he is raising herein during the appeal at the Court of Appeal.
10. Consequently, I find the application not to be merited and the same is dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 24TH OCTOBER 2025.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Oluoch for Respondent

Appellant – present virtually at G. K. Prison Malindi

Court Assistant: Jumaa

