



**Odondo v Republic (Revision Case E033 of 2024)
[2025] KEHC 15612 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
REVISION CASE E033 OF 2024
JN KAMAU, J
OCTOBER 27, 2025**

BETWEEN

JOHN ODONDO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* Cap 63A (Laws of Kenya). He was also charged with an alternative charge of the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. He was convicted of the main charge and sentenced to life imprisonment.
2. Being aggrieved by the said decision, he lodged a first appeal at the High Court in Kakamega HCCRA No 145 of 2013 where the court upheld his conviction and sentence.
3. Being aggrieved by the said decision, he lodged a second appeal at the Court of Appeal in Kisumu Criminal Appeal No 150 of 2016 where the court also confirmed his conviction and upheld his sentence of life imprisonment.
4. On 29th April 2024, he filed Notice of Motion application dated 19th April 2024 seeking a review of his sentence. He sought the court's leniency and pleaded for his sentence to be reduced to the least prescribed. He pointed out that he was an old man of sixty-eight (68) years and of weak health.
5. He placed reliance on the cases of *Maingi & 5 Others vs DPP & Another* (Petition No E017 of 2021)[2002]eKLR, *Joshua Gichuki Mwangi vs Republic*[2022]eKLR and *Julius Kitsao Manyeso Case Malindi Criminal Appeal No 12 of 2021* (eKLR citation not given) without highlighting the holding he relied on therein.



6. He also urged the court to consider Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) while reviewing his sentence.
7. His undated Written Submissions were filed on 12th September 2024 while those of the Respondent were dated 7th February 2025 and filed on 10th February 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.

Legal Analysis

8. The Applicant invoked Article 22, 23 (1), 50 (2)(q) and (p), 159 (2)(a),(b) and (d) and 165(3) of the Constitution of Kenya, 2010, Sections 216, 361(7), 362, 363, 364, 365, 366, 323, 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) and Section 26(2) of the Penal Code Cap 63 (Laws of Kenya). He also relied on Paragraphs 5.1.21, 4.8, 1.1-8 of the Judiciary Sentencing Policy Guidelines Revised, 2023.
9. He cited the case of R vs Bieber (2009)/WLR 223 where it was held that life sentence ought not to be equated to the natural life of the convict person. He argued that the indeterminate mandatory nature of life sentence was unconstitutional. It added that life sentence was inhuman treatment pursuant to Article 29 since it did not leave a margin for rehabilitation, reforms and social re-adaptation, the principal objective of sentencing which could be defeated by it.
10. He asserted that he was an old man of seventy (70) years living at the sunset period of his life and his parents and wife were dead. He pointed out that he had been operated on Hernia (swollen abdomen) twice and also suffered from ulcers.
11. He further submitted that he had served thirteen (13) years in prison since his arrest and had been rehabilitated, reformed and socially re-adapted. He stated that he was a first-offender and was remorseful. He sought for the court's leniency.
12. On its part, the Respondent invoked Section 8(1) and 8(2) of the Sexual Offences Act and submitted that the sentence meted out by the Trial Court was lawful considering the nature of the case. It placed reliance on the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was to assist in rehabilitation of the offenders. It argued that the sentence meted out on the Applicant was to instill sense of responsibility for his actions and allow for his rehabilitation.
13. It contended that this court lacked the jurisdiction to review the sentence imposed upon the Applicant as he had already appealed to this court and the Court of Appeal. It further invoked Article 165(3) and (6) of the Constitution and cited the case of John Kagunda Kariuki vs Republic[2019]eKLR where it was held that as the Applicant's appeal had already been heard by the High Court, he could not return to the High Court for a review of sentence imposed and that he was at liberty to apply for review at the Court of Appeal.
14. It further cited Sections 362 and 364 of the Criminal Procedure Code and argued that the powers of the High Court on review were to be exercised only over subordinate courts and not over the High Court with respect to its own decisions. It added that in this case, the Court of Appeal was binding on this court. It argued that a convicted person could not appeal and at the same time seek review. It urged this court to dismiss the Applicant's application herein for lack of merit.



15. Notably, the Applicant herein was sentenced under Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. The said Section 8(2) of the *Sexual Offences Act* provides as follows: -

“A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.”
16. This court could therefore not fault the Trial Court for having sentenced the Appellant to life imprisonment as that was lawful
17. In the case of Joshua Gichuki Mwangi vs Republic [2022] eKLR, the Court of Appeal reiterated the reasoning in the case of Dismas Wafula Kilwake vs Republic [2018] eKLR where it held that Section 8 of the *Sexual Offences Act* had to be interpreted so as not to take away the discretion of the court in sentencing offences and held that it was impermissible for the legislature to take away the discretion of courts and to compel them to mete out sentences that were disproportionate to what would otherwise be an appropriate sentence.
18. However, in a decision that was delivered on 12th July 2024, the Supreme Court overturned the decision of the Court of Appeal in the case Joshua Gichuki Mwangi vs Republic (Supra) and stated that the Court of Appeal had no jurisdiction to exercise discretion on sentences that had a mandatory minimum sentence.
19. As the Court of Appeal had already dealt with this matter on issue of sentencing, this court was bound by the said decision and could not purport to sit in review or appeal of the superior court’s decision. Its hands were tied regarding exercising its discretion to reduce the Applicant’s sentence. It had no option but to leave the said sentence that was meted against the Applicant herein undisturbed.
20. Going further, Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
21. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”
22. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in Ahamad Abolfathi Mohammed & Another vs Republic [2018]eKLR.
23. Notably, as the Applicant was serving a life imprisonment which was indeterminate, the period that he spent in remand when his trial was ongoing could not be granted.
24. Even so, it is important to point out that the Applicant herein file his application under the wrong case, namely Revision. His case did not fall under Revision as stipulated in Section 362 and Section 364 of the Criminal Procedure Code Cap 75 (Laws of Kenya).



25. Section 362 of the Criminal Procedure Code states 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.

26. Further, Section 364 of the Criminal Procedure Code provides that:-

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 sections 354, 357 and 358, and may enhance the sentence;
 - b. in the case of any other order other than an order of acquittal, alter or reverse the order.(c)in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

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 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.

27. It was evident that the Applicant’s present application did not fall within what could be deemed to be a revision. To avoid wastage of time by him filing an application under the correct case type, it was for that reason that this court found it prudent to consider the merits of his application as opposed to striking out the present application and directing him to file a fresh application when his prayer would still not be merited in view of the determination of the Supreme Court in the case of Joshua Gichuki Mwangi vs Republic (Supra).



Disposition

28. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 19th April 2024 and filed on 29th April 2024 was not merited. His conviction and sentence be and are hereby upheld as they were both safe.
29. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

