



REPUBLIC OF KENYA



**Wanjala v Republic (Criminal Revision E060 of 2025)  
[2025] KEHC 15821 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15821 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL REVISION E060 OF 2025  
MS SHARIFF, J  
OCTOBER 24, 2025**

**BETWEEN**

**JOHN WEKESA WANJALA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Background**

1. The applicant herein John Wekesa Wanjala was charged, tried, convicted and sentenced to 15 years in prison for the offence of defilement contrary to section 8(1) as read with section 8(4) of *Sexual Offences Act* No. 3 of 2006 in the Senior Principal Magistrate's Court at Kimilili SOA CR NO 53 OF 2018.
2. Being dissatisfied with the decision of the trial court, the applicant lodged an appeal in Bungoma HC. CRA No. 44 of 2021. The appeal was devoid of merit. The appeal was heard and dismissed by Justice S. N. Riechi on 27<sup>th</sup> day of September 2019. The appellate court upheld the conviction and the sentencing the same.
3. The applicant subsequently preferred a revision application vide Bungoma HCCR MISC CRA NO. E 137 OF 2024 wherein his application was heard and dismissed on 20/1/2025 by my sister Justice Rose Ougo.

**Grounds Of Application**

4. The applicant has not given up and has now moved this court for review of his sentence seeking for the court to enroll the applicant on probation/ community service on grounds, THAT:-
  - A. He underwent an operation in the year 2014 and still needs proper medical attention which cannot be provided in prison.



- B. There is an existing land dispute of which he is the owner of the suit land and prayer is that he be enrolled on probation/community service to enable him to settle the existing land dispute.
- C. The applicant is transformed, reformed and well rehabilitated, therefore, promises to be law abiding citizen as well as abiding by terms and conditions issued by the probation/community service order officers.
- D. The applicant was the sole bread winner to his family of which two are schooling and need proper parental care and guidance and by releasing him on probation, shall be of great justice done to the children.
- E. The applicant is aged 63 and therefore experiencing illness associated with old age therefore it's his humble request that his prayer be granted.

### **Legal Framework**

5. This court has powers under Section 364 of the Criminal Procedure code and article 165(6) and (7) of *the Constitution* of Kenya 2010 to exercise revisionary jurisdiction. Section 364 of the Criminal Procedure code provides as follows: -
  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.
  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. On the other hand, article 165(6) and (7) state as hereunder
  - (6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person,



and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

- (7) The President may at anytime order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

### **Analysis And Findings**

6. The Supreme Court and Court of Appeal have consistently held that discretion must be exercised within the limits set by law, and courts cannot override Parliament 's intent without expressing constitutional grounds.
7. This Court finds no illegality or impropriety in the sentencing decision of the trial court and the appellate court which already noted out that the trial court was indeed lenient in the circumstances. As aforesaid a similar application had already been determined by a court of equal jurisdiction to this court. This Court is therefore functus officio in light of the ruling of Justice Rose Ougo delivered on 20/1/2025 in HCCR Misc. A NO. E137 OF 2024.

### **Conclusion**

8. Premised upon the reasons disclosed hereinabove, I do find that this application is devoid of merit and I thereby dismiss it in its entirety.
9. This file is hereby marked as closed.

**DATED AND DELIVERED AT BUNGOMA THIS 24<sup>TH</sup> DAY OF OCTOBER 2025.**

**M.S SHARIFF**

**JUDGE**

