



REPUBLIC OF KENYA



KENYA LAW
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**Mutie v Republic (Criminal Revision E021 of 2025)
[2025] KEHC 16069 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E021 OF 2025
NIO ADAGI, J
NOVEMBER 5, 2025**

BETWEEN

RICHARD NGUMBAU MUTIE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a Revision from conviction and sentence delivered on 28th July 2022
in Chief Magistrate's Court in Mavoko in S. O. Case No. E002 of 2021)*

RULING

1. The Applicant Richard Ngumbao Mutie vide a Chamber Summons application dated 26th March 2025, seeks for orders that:-
 - i. the Honourable Court to review the sentence
 - ii. the Honourable Court invokes section 333(2) Criminal Procedure Code.
2. The application is supported by the supporting affidavit of the Applicant and premised on the grounds on the face of the application.
3. The Applicant was on 13/9/2021 charged before Chief Magistrates Court at Mavoko with the offence of attempted defilement contrary to section 9(1) as read with section 9(2) of the *Sexual Offences Act*. The Applicant further faced an alternative Charge of Committing an Indecent Act with a child contrary to section 11(1) of the *Sexual Offences Act*.
4. The Prosecution case was that on diverse occasions between the year 2020 and 10th September 2021 at Rokana area in Athi River Sub-county within. Machakos County intentionally and unlawfully attempted to cause his male genital organ (penis) to penetrate the female genital organ (vagina) of one D.M.R. (name with held) a child aged 10 years.



5. The Applicant pleaded not guilty to both Charges and the case proceeded for hearing. The Prosecution called four (4) witnesses in support of its case. The Applicant gave sworn evidence. The trial court upon considering the evidence on record, it convicted the Applicant and sentenced him to 10 years imprisonment on 28th July 2022.
6. The Applicant did not lodge an appeal against the decision of the lower court but opted to file the instant application praying and requesting this court to exercise its revisionary powers donated to it by Section 364 of the CPC and also to invoke the provisions of Section 333 (2) of the CPC and factors in the entire period of 10 months which the Applicant spent in lawful custody during the trial period.
7. The application is opposed by the Respondent who submit that the trial court properly evaluated the evidence and came to the right conclusion.

Analysis and Determination

8. I have carefully perused and considered the trial court's record, the present application and the submissions filed by the Parties. I will determine whether the prayers sought by the applicant can be granted.
9. The High Court under Article 165 (6) and (7) of *the Constitution*, 2010 exercises supervisory and revisionary jurisdiction over subordinate courts.
10. Under this jurisdiction the court either on its own motion or by an application made by an aggrieved party will call for the record of proceedings in a subordinate court at any stage to look at the propriety, legality or correctness of the decision of the subordinate court.
11. This power of the High Court to call for the record is also provided for under Section 362 of the CPC which provides that the High court may call for and examine the record of any proceedings before any subordinate court situated within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, reviewed or passed of such subordinate court.
12. The right to be heard under this jurisdiction is not mandatory but under Section 364(5) of the CPC the High Court when exercising its powers of revision has discretion to hear or not to hear the parties either personally or through their advocates. However, the court may hear any party either personally or by an advocate.
13. The Applicant herein upon conviction for the offence of attempted defilement, he was sentenced to 10 years imprisonment under Section 9(2) of the *Sexual Offences Act*.
14. The Appellant is now seeking review of the said sentence downwards.
15. The High Court is vested with wide revisionary powers to look into the orders, decisions, proceedings, sentences where any of the following circumstances manifest themselves.
 - a. Where the decision is grossly erroneous
 - b. Where there is no compliance with the provisions of the law.
 - c. Where the finding of fact affecting the decision as not based on the evidence or it is result of mis-reading or non-reading of evidence on record
 - d. Where the material evidence on the parties is not considered.



- e. where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence,
- (See Article on Revision in civil and criminal cases by Rabia Tus – Sarela and Marya [http://www.academia.Edn/24795/revision is in Civil and Criminal Cases](http://www.academia.Edn/24795/revision%20is%20in%20Civil%20and%20Criminal%20Cases))
16. These are the principles which will guide this court in examining the issues of the present application.
17. It will be therefore my task to see whether the sentence of 10 years under section 9(2) of the *Sexual Offences Act* was irregular, illegal or incorrect. The said Section provides as follows:-
- “A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years”
18. The above section is couched in mandatory terms in that the 10 years imprisonment is the minimum sentence that can be imposed on an Offender who commits the offence of attempted defilement and nothing less than that.
19. It follows therefore that the sentence by the trial court was legal and correct. I have no jurisdiction to interfere with the same. The prayer for revision of the sentence must fail. The Applicant being unrepresented and a lay man is at liberty to pursue an appropriate appeal on his conviction and sentence by the trial court.
20. The Applicant has also invited this invoke Section 333(2) Criminal Procedure Code and factor in the entire period of 10 months which the Applicant spent in lawful custody during the trial period.
- Section 333 (2) of the Criminal Procedure Code provides thus:-
- (2) 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.
21. I have perused through the trial court’s file and the judgement. The Applicant was arrested on 10/09/2021 and remained in custody throughout the trial until on 28/07/2022 when he was sentenced which is about ten (10) months.
22. The judgement reveals that the trial court sentenced the Applicant to 10 years imprisonment but did not take into account the duration the Appellant had been in remand custody awaiting trial contrary to the provisions of Section 333(2) of the Criminal Procedure Code.
23. I will allow the Applicant’s second prayer and order that 10 months be deducted from the 10 years imprisonment to comply with the provisions of Section 333(2) of the CPC.
24. The Application therefore succeeds partly.
25. Orders Accordingly
26. This Revision file is closed.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS THIS 5TH NOVEMBER 2025

NOEL I. ADAGI

JUDGE



DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 5TH NOVEMBER 2025

In the presence of:

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