

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E254 OF 2024

MICHAEL GITHINJI KAIRU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein **MICHAEL GITHINJI KAIRU** has filed the application dated **17th October 2024** seeking review of the sentence which was imposed upon him by the Lower Court.
2. The **ODPP** opposed the application.
3. The Applicant had been charged in **Mukurweini PMCC No. 003 of 2020** with the offence of **SEXUAL ASSAULT CONTRARY TO SECTION 5(1) (a) (i) (2) OF THE SEXUAL OFFENCES ACT 2006.**
4. The particulars of the charge were that
“On the 21st day of September 2020 at Gachiro Village in Mukurweini Sub-County within Nyeri

County, unlawfully used his finger to penetrate the vagina of MWM a child aged 7 years.”

5. The Applicant faced an alternative charge of **COMMITTING AN INDECENT ACT WITH A CHILD CONTRARY TO SECTION 11(1) OF THE SEXUAL OFFENCES ACT 2006.**

6. Upon the charges being read out to him the Applicant pleaded **Guilty** to the charges. The facts were read out to him and the Applicant maintained his plea of guilty. He was then sentenced to serve **ten (10) years** imprisonment.

7. The applicant now prays that his sentence be reviewed.

8. The Court is empowered by **Article 165 (6)** of the **Constitution of Kenya 2010** to review the decision of a subordinate court. Article 165 (6) provides that:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court.”

9. **Section 362** of the **Criminal Procedure Code Cap 75 Laws of Kenya** vests in the High Court the jurisdiction to revise decisions made by the lower courts in the following terms:-

“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, sentences or order recorded or passed and as to the regularity of any proceeding of any such subordinate court.”

10. The orders which the High Court may make upon revision are provided under **Section 364** of the Penal Code.
11. In reviewing a sentence the High Court will be looking at the legality and correctness of both the proceedings in the lower court as well as the sentence imposed.
12. I have carefully perused the proceedings in the lower court. I note that the charge was read out to the Applicant and he entered a plea of guilty. In view of the seriousness of the charges which he faced the trial magistrate even took the

precaution of ordering a psychiatric evaluation of the Applicant to determine if he was fit to plead.

13. The medical report indicated that the Applicant was fit to plead. The

charge was again read out to the Applicant who maintained his plea of '**Guilty**'. Thereafter the facts were read out to the Applicant and he responded.

"The facts are true. I did the act. No one saw me."

14. This amounted to an unequivocal plea of Guilty and the trial court

correctly proceeded to convict the Applicant.

15. The Applicant was given an opportunity to mitigate and a Probation

Report was called for. The court then sentenced the Applicant to **ten (10) years**.

16. **Section 5(2)** of the Sexual Offences Act provides that

"(2) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term of not less than ten years but which

may be enhanced to imprisonment for life.”

[Own emphasis]

17. The Law therefore provides for a mandatory minimum sentence for the

offence of Sexual Assault. The constitutionality of **mandatory minimum sentences** has been the subject of much debate in the courts in this country. However this debate was put to rest by the **Supreme Court of Kenya** which in case of **FRANCIS KARIOKO MURUATETU -VS- REPUBLIC & 5 Others**, Petition **No.15 and 16 of 2015** (Muruatetu 2 case) clarified that the earlier decision in **Muruatetu 1** which declared mandatory death sentence unconstitutional did not apply to other mandatory minimum sentences. In other words the mandatory minimum sentence provided for under the Sexual Offences Act was held to be constitutional.

18. I therefore find that the sentence imposed upon the Applicant was

lawful. I note that the trial court had the option of imposing a higher sentence up to life imprisonment. However the court imposed the minimum sentence.

19. Finally I find no merit in this application for review. The same is dismissed in its entirety. No order on costs.

Dated in Nyeri this 21st day of November 2025.

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MAUREEN A. ODERO
JUDGE