

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT THIKA**  
**MISC APP. NO. E027 OF 2025**

**MICHAEL KINYANJUI KAMAU.....**  
**APPLICANT**

**VERSUS**

**PROSECUTION.....RESPONDENT**

**RULING**

1. The applicant filed the instant application dated 7<sup>th</sup> March 2025 seeking to review the applicant's sentence of ten years imprisonment for the offence of committing an indecent act with a child contrary to **Section 11 (1) of the Sexual Offences Act** and that the remainder of the term be served as a non-custodial sentence in the spirit of decongestion of prisons.
2. The application is supported by the affidavit of *Michael Kinyanjui Kamau* on grounds that the applicant has demonstrated good character, is remorseful and is desirable to keep the peace within the community.
3. The Respondent opposed the application on the basis that the applicant had filed a similar application seeking revision of the sentence in **Kiambu HCCREV E258 of 2024** which was dismissed for lacking in merit. Therefore, this court lacks jurisdiction to entertain an application that has been conclusively determined by a court of competent and concurrent jurisdiction.
4. The court directed that the application be canvassed through written submissions.

5. The Applicant submitted that he ought to benefit from the provisions of **Section 333 (2) of the Criminal Procedure Code** as the same were not adhered to by the trial magistrate. Having stayed in custody from 2018 when he was arrested to 6<sup>th</sup> August 2019 when he was sentenced, the applicant relied on **Paul Evanai Nakwanga v Republic [2019] eKLR** to urge that the period spent in custody ought to be taken into account when computing the sentence.
6. The Respondent reiterated that the court lacked jurisdiction to entertain a matter that had already been conclusively addressed by a court of competent and concurrent jurisdiction. The Respondent therefore urged that the application be dismissed.
7. The main issue that commends itself for determination is whether this court has jurisdiction to determine the instant Application.
8. The High Court's power of revision is set out in **Article 165 (6) and (7) of the Constitution** which provides:-  
***(6)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 over a superior court.***  
***(7)For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.***

9. A perusal of the pleadings herein shows that the legality of the sentence meted against the Applicant has already been addressed by a court of competent jurisdiction. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under sections 362 to 364 of the *Criminal Procedure Code*. This court therefore does not have the jurisdiction to review its own decision. In **John Kagunda Kariuki v Republic (2019) eKLR**, Ngugi J. (as he then was) held that:-

***“In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.***

10. In the persuasive decision of **Daniel Otieno Oracha v Republic (2019) eKLR**, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-

***“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....***

***The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance***

***before the Court of Appeal even if it was to challenge sentence alone.***

***Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”***

11. This court, differently constituted, which is a court of concurrent jurisdiction has already upheld the Applicant’s sentence. Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.

12. In the end, I find that this court has no jurisdiction to review the Judgement of a court of concurrent jurisdiction and therefore the Application herein lacks merit and the same is dismissed.

***13. Resultantly, this Application is dismissed***

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup>  
DAY OF DECEMBER, 2025.**

**HON. T. W. Ouya  
JUDGE**

**For Applicant....Michael Kinyanjui Kamau (Present at  
Kamiti)**

**For Republic..... Ms. Nzuki  
COURT ASSISTANT.....Brian**

ORIGINAL