

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT CRIMINAL REVISION CASE NO. E146 OF 2025**

**JAMES BARU MWANGI.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. The Applicant **JAMES BARU MWANGI** has filed this application dated **2<sup>nd</sup> September 2025** seeking review of the sentence imposed upon him by the Lower Court.
2. The Applicant was arraigned in the Magistrates Court in Nyeri Vide **CMCRC No. E055/2021** on a charge of **RAPE CONTRARY TO SECTION 3(1) (a) (b) as read with SECTION 33 of THE SEXUAL OFFENCES ACT 2006**. The particulars of the charge were that:-

**“On the 11<sup>th</sup> day of December, 2021 at around 0100 hrs at Mweiga Township in Kieni West Sub-County, intentionally and unlawfully caused your**

**penis to penetrate the vagina of S.N.N without her consent.”**

3. The Applicant faced an alternative charge of **INDECENT ACT WITH AN ADULT CONTRARY TO SECTION 11A OF THE SEXUAL OFFENCES ACT, 2006.**
4. The Applicant entered a plea of **‘Not Guilty’** to both charges. His trial was conducted in the Lower Court and vide the judgment delivered on **25<sup>th</sup> May 2023, HON. A. G. KIBIRU Chief Magistrate** convicted the applicant of the offence of Rape.
5. The Applicant was then accorded an opportunity to mitigate. Thereafter the trial magistrate sentenced the Applicant to serve **ten (10) years** imprisonment with no option of a fine. The Applicant now prays for a review of his sentence.
6. The **ODPP** represented by **MS KANIU** opposed the application for review of sentence.
7. The Power of the High Court to review sentences is set out in **Section 362** of the **Penal Code, Cap 63 Laws of Kenya** which provides 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 in any such subordinate court.”**

8. The orders which the High Court may make upon revision are provided by **Section 364** of the **Penal Code**.

9. I have carefully perused the record of the proceedings before the Lower Court. I am satisfied that the trial was properly conducted by the trial court and the applicant was allowed the opportunity to cross-examine all the prosecution witnesses.

10. Upon conviction the Applicant was allowed an opportunity to mitigate.

The sentence imposed by the court was lawful. The Applicant was a repeat offender a fact which he has not denied thus a custodial sentence was appropriate.

11. The court is empowered by **Article 165(6)** of the **Constitution of**

**Kenya 2010** to review a decision by a subordinate court.

Article **165(6)** provides:-

**“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.”**

12. **Section 333(2)** of the **Penal Code Cap 63 Laws of Kenya** provides

as follows;-

**“Subject to the provisions of Section 38 of the Penal Code, 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 sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody [Own emphasis]”**

13. I note that in sentencing the Applicant the trial court stated that

**“The period that Accused has remained in custody to be factored in the sentence in line with section 333(2) CPC”**

14. The trial magistrate did therefore take into account the period spent in

remand but failed to give direction on when the sentence was to commence.

15. The record indicates that the applicant was arraigned in court on **14<sup>th</sup> December 2021**. As such I direct that the **ten (10) year** term of imprisonment is to run from **14<sup>th</sup> December 2021**. It is so ordered.

**Dated in Nyeri this 5<sup>th</sup> day of December 2025**

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**MAUREEN A. ODERO  
JUDGE**

ORIGINAL