



REPUBLIC OF KENYA



KENYA LAW
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**Kiraga v Republic (Criminal Revision E064 of 2025)
[2026] KEHC 361 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E064 OF 2025**

M THANDE, J

JANUARY 23, 2026

BETWEEN

NZAI ISMAIL KIRAGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted of the offence of gang rape contrary to Section 10 of the *Sexual Offences Act*, in Malindi Sexual Offences Case No. E076 of 2023. Being a minor, the Applicant was vide a ruling dated 22.1.25 committed to Shimo la Tewa Borstal until 29.6.25 and thereafter be transferred to an adult prison to serve a sentence of 2½ years.
2. In his revision Application, the Applicant seeks not to be transferred to an adult prison on 29.6.25 as directed by the trial court. He stated that he was 17 at the time of commission of the offence and that the law allows him to be detained with other children provided that he does not celebrate his 21st birthday at the institution.
3. The Respondent opted not to file a response.
4. *The Constitution* has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:
 - (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 not 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



5. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
6. To give effect to this provision with regard to criminal matters, the Criminal Procedure Code elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the Criminal Procedure Code (CPC) provides:

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 of any such subordinate court.

7. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness or that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 of the CPC, enhance the sentence or alter or reverse the order except that of an acquittal. Section 364(5) of the CPC is explicit that 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 instance of the party who could have appealed.
8. I have called for and perused the record of the trial court. The Applicant seeks that the order in question be “revoked”. The Applicant has not however demonstrated that the said order and in particular the sentence imposed upon him is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court.
9. Section 347 of the Criminal Procedure Code provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by *the Constitution* or a statute, that procedure should be strictly followed. One such case is *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where the Court of Appeal stated:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.

10. Flowing from the above stated provisions of the law and the authority cited, the Applicant’s redress lies in filing an appeal. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon.
11. In light of the foregoing, the Court finds that the Application is unmerited and the same is dismissed.

DATED SIGNED and DELIVERED in MALINDI this 23rd day of January 2026

M. THANDE

JUDGE

