

RULING
HCCRREV E110 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
HCCRREV E110 OF 2025
CHERERE- J.

BETWEEN
MARIAM KERUBO MONGARE
..... APPLICANT
AND
DIRECTOR OF PUBLIC PROSECUTIONS.....
RESPONDENT

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1. The Applicant, Mariam Kerubo Mongare, moved this Court by a Notice of Motion filed dated 2025 seeking revision of the sentence imposed upon her in Nyamira Nyamira MCCR E774 of 2025. The application is expressed to be brought under sections 361, 362 and 364 of the Criminal Procedure Code and the Probation of Offenders Act.
2. The record shows that the Applicant was convicted on 08th December 2025 for the offence of aiding and abetting the commission of female genital mutilation, contrary to section 20 of the Prohibition of Female Genital Mutilation Act, No. 32 of 2011. Upon conviction,

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the trial court sentenced her to serve three years' imprisonment. A warrant of committal dated 08th December 2025 was duly issued committing the Applicant to Kisii Women Prison to serve the sentence.

3. The application is supported by the Applicant's sworn affidavit and a certificate dated 17th December 2025 issued by the Officer in Charge of Kisii Women Prison confirming that no appeal or prior application for revision had been lodged following conviction and sentence. In her affidavit and grounds in support of the application, the Applicant pleads that she is a first offender, expresses remorse, states that she has dependants who relied on her for support, and urges the Court to consider reviewing the custodial sentence or substituting it with a non-custodial one, including probation.

4. The jurisdiction of this Court in revision is circumscribed by sections 362 and 364 of the Criminal Procedure Code. The High Court may call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, and as to the regularity of the proceedings. The power is

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supervisory and is not intended to provide an alternative avenue of appeal.

5. The principles governing interference with sentence are well settled. In Wanjema v Republic (1971) EA 493, the Court of Appeal held that a superior court should not interfere with the discretion exercised by a trial court in sentencing unless it is demonstrated that the court acted on a wrong principle, overlooked a material factor, considered an irrelevant one, or imposed a sentence that is manifestly excessive in the circumstances. That decision underscores that sentencing discretion, the weight to be accorded to mitigation, and questions of proportionality are matters that properly fall within the appellate jurisdiction, not within the limited scope of revision.

6. Applying those principles to the present application, it is evident that the Applicant does not contend that the trial court lacked jurisdiction, misdirected itself on the law, imposed an illegal sentence, or conducted the proceedings irregularly. There is no allegation that the sentence-imposed falls outside the statutory framework

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or that the trial court took into account irrelevant considerations or ignored mandatory ones.

7. What the Applicant advances before this Court are pleas grounded purely on mitigation and personal circumstances. While such considerations are relevant at the point of sentencing, they are matters that were within the discretion of the trial court. They do not, without more, disclose any illegality, impropriety or incorrectness that would justify the exercise of this Court's revisionary jurisdiction.

8. The offence for which the Applicant was convicted is a serious one. Parliament, through the Prohibition of Female Genital Mutilation Act, has expressed a clear legislative policy aimed at eradicating a harmful practice that violates the dignity, health and bodily integrity of women and girls. The offence of aiding and abetting the commission of female genital mutilation is treated with equal gravity. The custodial sentence of three years' imprisonment imposed by the trial court is lawful and falls within the parameters set by statute. It cannot be said to be manifestly excessive.

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Appearances

Court Assistant	- Hilda
Applicant	- Present in person
For the DPP	- Mr. Chirchir (SADPP)