

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL DIVISION**  
**MISC. CRIMINAL APPLN NO. E080 OF 2025**

PHILIP MARTIN ARIGI ..... APPLICANT

- VERSUS -

REPUBLIC ..... RESPONDENT

**R U L I N G**

1. By a Motion on Notice dated **6/8/2025**, the applicant seeks the revision of the orders of sentencing issued by Hon. C. Oruo (PM) on the **31/5/2025**.
2. Though not clearly outlined, a reading of the application reveals that it is brought under **Articles 22 (1), 23 (1), 25 (c), 27 (1) & (2) and 50 (2) (p)** of the **Constitution of Kenya** and **Sections 362 and 364** of the **Criminal Procedure Code** and is anchored on the grounds therein as well as the supporting affidavit of **Philip Martin Arigi** sworn on the **6/8/2025**.
3. The applicant was charged with and convicted of the offence of defilement of a child contrary to **section 8 (2) of the Sexual Offences Act**. He also faced an alternative count of having an indecent act with a child contrary to **section 11 (1)** of the same Act. The applicant was sentenced to 30 years imprisonment.
4. Dissatisfied with the decision of the trial court, the applicant appealed his conviction and sentence vide **Kisumu High Court Criminal Appeal No. E029**

of 2023 wherein B.M. Musyoki J. upheld the applicant's conviction and sentence.

5. The applicant has now approached this court seeking to have his sentence revised on the grounds that there was conflicting evidence presented by the state before the trial court with regard to the complainant's age. That there were different reports on age presented by the state and this prejudiced him and amounted to a miscarriage of justice.
6. The application was disposed off by way of written submissions. The appellant submitted that his conviction and sentencing was unsafe as neither the court or the prosecution offered any reasonable explanation on the adoption of the age assessment report that was never certified at the registry.
7. The state opposed the application and submitted that 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* and thus this court lacked the jurisdiction to review its own decision as was held in the case of **John Kagunda Kariuki v Republic (2019) eKLR**.
8. I have considered this application. The High Court's power of revision is set out in *Article 165 (6) and (7)* 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. *Section 362 of the Criminal Procedure Code* provides: -

*“The High Court may call 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.”*

10. *Section 364(1) of the Criminal Procedure Code* provides: -

*“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-*

*in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;*

*In the case of any other order other than an order of acquittal alter or reverse the order.*

*(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”*

11. In Joseph Nduvi Mbuvi v Republic [2019] eKLR, Odunga J (as he then was observed): -

*“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the*

*jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”*

12. Consequently, the question that this Court encounters and the threshold for exercise of revisionary powers is whether there were manifest irregularities or illegalities by the subordinate court.

13. The record is clear that at the end of the trial on the **31/5/2025**, the applicant was sentenced to serve 30 years' imprisonment. The applicant now submits that his sentencing was unsafe as the same was grounded on an age assessment report that was not certified at the registry

14. Firstly, I do not think that there exists any jurisdiction to review a decision that has already been tested on appeal. That jurisdiction exists as an original exercise of the revisionary jurisdiction to correct irregularities or an illegality. Once a decision or proceeding has been appealed against, that jurisdiction dissipates as it is expected that any perceived irregularity or illegality would be corrected on appeal.

15. Secondly, in the present case, it is clear that this issue was raised by the appellant during his appeal and the Court considered the same and made a determination on it. If the applicant was aggrieved by that decision, he should

have appealed to the Court of Appeal which has the jurisdiction to correct any mistake made by this Court.

16. Accordingly, I find that this Court lacks jurisdiction to determine the issue raised and dismisses the application.

It is so ordered.

**DATED** and **DELIVERED** at Kisumu this 12<sup>th</sup> day of **February, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**