



REPUBLIC OF KENYA



**Njeri v Republic (Criminal Revision E002 of 2026)
[2026] KEHC 3425 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E002 OF 2026
JN ONYIEGO, J
MARCH 16, 2026**

BETWEEN

JOSEPH MURIITHI NJERI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence of Hon. R. Aganyo (PM)
delivered on 13.2.24 in Wajir PM's Court in S. O. Case No. E012/2023)*

RULING

1. The appellant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the charge were that on diverse dates between July 2020 and 09th August, 2023 at unknown location within the republic of Kenya he intentionally caused his penis to penetrate into the anus of JM, a child aged 15 years.
2. The appellant faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the charge were that on 09.08.2023 at [particulars withheld] within Wajir County he intentionally touched the anus of JM, a child aged 15 years with your penis. Upon conviction, he was sentenced to serve 60 years.
3. Being aggrieved by the determination of the trial court, the appellant, preferred an appeal against his conviction and sentence before this court and via a judgment delivered on 08.04.2025, his conviction was affirmed while sentence was reduced to 15 years to commence from the date of sentence by the trial court.
4. He has since filed this application seeking to have his sentence reviewed downwards. That this court be pleased to resentence him afresh given that he did not get an opportunity to mitigate. He contended that this court is endowed with the necessary jurisdiction under article 165 (3) (a)(b)(d) (ii)(6) of the *constitution* to allow the prayers sought.



5. He urged that the sentence meted out was not only harsh but also excessive given the circumstances herein and further, that the said sentence did not factor in the time spent in custody as provided for under section 33(2) of the Criminal Procedure Code. He thus urged this court to allow his prayers as sought.
6. The application was argued orally in which the applicant urged that he was seeking for resentencing. The respondent on the other hand was opposed to the same. Counsel for the respondent urged that this court having pronounced itself on the appeal previously preferred by the appellant, it was functus officio. This court was thus urged to dismiss the application herein.
7. I have considered the application and the oral submissions thereof. The issue for determination is whether this Honourable Court has jurisdiction to issue the orders sought.
8. It is not in dispute that having been aggrieved by the judgement of the trial court the applicant appealed to this court and the appeal was heard and determined. From the trial court's initial sentence, this court significantly reduced the applicant's sentence to 15 years.
9. In the case of John Kagunda Kariuki v Republic [2019] eKLR the Court held as follows;

“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. The only remedy thus available to the applicant now lies elsewhere as this court does not have jurisdiction to determine the issues raised in the application.
11. In the foregoing, the application herein is found to be bereft of any merit and the same is hereby dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF MARCH 2026

J. N. ONYIEGO

JUDGE

