



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E013/2025

FRANCIS MUTUKU ALIAS BABU VS THE REPUBLIC

RULING

(Revision of sentence from HCCR Appeal no. E053 OF 2021 judgement dated and delivered on 15th day of February 2024 at Mombasa & criminal case (SO) no. 39 of 2018 judgement dated and delivered on 19th December 2019 at Mombasa)

- 1) The undated Notice of Motion before this Court prepared and filed by the Applicant is brought under Section 364 of the Criminal Procedure Code. The Applicant through his tailor made application has moved the court for a review of his sentence passed by the High Court in High Court Criminal Appeal no. E053 of 2021.
- 2) The applicant was charged in the trial court with the offence of defilement contrary to section 8 (1) as read with Section 8 (2) of the Sexual Offences Act. He was convicted and sentenced to 30 years' imprisonment.
- 3) He filed High Court Criminal Appeal no. E053 of 2021 where the High Court dismissed his appeal holding both the conviction and sentenced.
- 4) The Applicant prays that the sentence be reviewed. I have considered the application, the affidavit in support of the same and the submissions on record.
- 5) The issue for consideration is whether the application has merit and what orders this court should make.



- 6) It is well settled in Kenya that the High Court cannot review or alter a sentence imposed or upheld by another judge of the same court. I find that this Honourable Court lacks jurisdiction to review or set aside the decision of another judge of concurrent jurisdiction. This principle is rooted in the doctrine of stare decisis and the hierarchy of courts which ensures consistency and finality in judicial decisions.
- 7) In **Republic vs Karisa Chengo & 2 Others (2017) Eklr**, The Supreme Court of Kenya held that the High Court cannot revisit or alter a sentence imposed by another judge of the same court unless the decision is appealed to a higher court or reviewed under specific statutory provisions.
- 8) In the case of **Joseph Nduvi Mbuvi vs Republic (2019) Eklr**, the Court of Appeal reaffirmed that a judge of the High Court cannot sit on appeal or review the decision of another judge of the same court. The court emphasized that such a practice would undermine judicial comity and create uncertainty in the administration of justice.
- 9) Therefore, the applicant's request for a sentence review cannot be entertained by this Honourable Court. Doing that would amount to sitting on appeal over a decision of a judge of equal standing. The applicant's proper avenue for such a challenge would be an appeal to the Court of Appeal as provided for under **Article 164 (3) of the Constitution of Kenya, 2010**.
- 10) The application lacks merit and the same is dismissed.

SIGNED, DATED and DELIVERED at MOMBASA Virtually on this 19th day of MARCH 2026.

WENDY KAGENDO MICHENI
JUDGE

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL



