Busolo v Republic (DPP) (Criminal Revision E302 of 2024)
[2026] KEHC 5575 (KLR) (27 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5575 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CRIMINAL REVISION E302 OF 2024

AC BETT, J

APRIL 27, 2026

BETWEEN

WILSON ANJIRI BUSOLO ..... APPLICANT

AND

REPUBLIC (DPP) ..... RESPONDENT

RULING

1. The Applicant was charged, tried and convicted for the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*. He was subsequently sentenced to serve twenty (20) years imprisonment.

2. The Applicant has now filed an application for review of the sentence, having opted not to appeal against the conviction. He seeks a re-sentencing and avers that he was a first offender, has undergone several rehabilitation and reform programs while in prison, and is ready to be reintegrated to the society as he needs to take care of his siblings who might become street children due to inadequate care and no formal education.

3. The Respondent opposed the application and filed grounds of opposition in which it stated that this court lacks jurisdiction to entertain the application which should have been raised through an appeal or a constitutional petition.

4. The court issued directions that the application be canvassed through written submissions which the parties filed and which the court has considered.

5. The only issue for determination is whether the court has jurisdiction to review the sentence as prayed by the Applicant.

6. The revisionary powers of the High Court is anchored on Article 165 (6) of the *Constitution* which grants the court supervisory powers over subordinate courts.

7. Section 362 of the Criminal Procedure Code empowers the High Court to call for and examine the records of any criminal proceedings before any subordinate court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. Section 362 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."

8. Flowing from the above, it is clear that the powers of the court are limited and cannot extend to the reduction of a lawful sentence. In William Mwangale Ongoma v. Republic [2020] KEHC 1446 (KLR), it was held:-

> " 7. A court in revision is not concerned with the merits of the decision of the court but rather on the impropriety, mistake, illegality of the order, sentence or judgment.
>
> 8. The basis of the Applicant's application is spelt out under prayer sought as order (iv) of his application which provides:
>
> > " That upon entering a plea of not guilty I have been in remand for duration of four (4) years and I wish the court to consider this."
>
> 9. Ordinarily, such a challenge to the sentence should be made by way of an appeal. And section 364 (5) of the Criminal Procedure Code is clear on this where it provides:
>
> > " (5) 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 insistence of the party who could have appealed."
>
> 10. This court's powers of revision are limited to satisfying itself as to the correctness, legality or propriety of any findings, sentence, or order recorded or passed and as to the regularity of any proceeding of any such subordinate court..."

9. Section 8 (1) (3) of the *Sexual Offences Act* provide:-

> " (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
>
> (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years."

10. I have perused the court file and have confirmed that the trial court applied the mandatory minimum sentence prescribed for the offence. There is therefore no illegality, mistake or impropriety in the sentence.

11. Under the Judiciary Sentencing Policy Guidelines 2023, it is provided:-

> " 2. 3.16 Where the law provides mandatory minimum sentences, the court is bound by those provisions and must not impose a sentence lower than what is prescribed.49 A fine shall not substitute a term of imprisonment where a minimum term of imprisonment is the only option provided.50 Courts must however remain cognisant of any changes made to the applicability of mandatory minimum sentences with respect to specific offences given the clear concerns that have been raised in a number of cases about the constitutionality of such sentences.
>
> 2. 3.17 Until the Supreme Court decides on the matters, Judicial Officers and Judges must adhere to the prevailing legislative frameworks, jurisprudence from courts and the SPGs 2022 during sentencing on the issue of the applicability of mandatory minimum sentences."

12. Under the principle of stare decisis, this court is bound by the directions given by the Supreme Court. In Republic v. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others Amicus Curiae [2024] KESC 34 KLR, the apex court held that:-

> " ...However, where a sentence was set in the statute, the Legislature had already determined the course, unless it was declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law."

13. Based on the foregoing analysis, I find and hold that this court lacks jurisdiction to review the sentence. The Applicant should have filed an appeal or a constitutional petition and not applied for revision of sentence. See Isaac Ojwang Okoyo v. Republic [2019] KEHC 3871 (KLR) where the court held that:-

> " This Court lacks jurisdiction to hear and determine an application for revision of sentence where there has been an appeal or where the Applicant ought to have appealed."

14. The upshot is that the application is found to lack merit. It is therefore dismissed. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF APRIL 2026.

A. C. BETT

JUDGE

In the presence of:

Applicant present virtually in person

Ms. Chala for the Respondent

Court Assistant: Polycap