



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kiragu v Republic (Criminal Revision E013 of 2025)  
[2026] KEHC 5758 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5758 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E013 OF 2025**

**TW OUYA, J**

**APRIL 30, 2026**

**BETWEEN**

**DAVID MACHARIA KIRAGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, David Macharia Kirage, approached this court vide a Notice of Motion dated 13<sup>th</sup> February, 2025, seeking a review of the sentence imposed on him by the Senior Principal Magistrates Court at Kangema in Sexual Offence case no. 18 of 2019, and confirmed by this court on appeal in Criminal Appeal no. E008 of 2023.
2. The background to the present appeal, as can be ascertained from the records of this court, is that the applicant was tried and convicted by the lower court for the offence of attempted defilement contrary to section 9(1) as read with section 9(2) of the *Sexual Offences Act* no. 3 of 2006. It was alleged that on 15<sup>th</sup> June, 2019, at around 1230hours in Wanjegi Location, within Murang'a county, the applicant intentionally attempted to cause his penis, to penetrate the vagina of FMW, a child aged 8 years.
3. Upon conviction, the applicant was sentenced to a term of fifteen (15) years' imprisonment. Aggrieved by the decision of the lower court, he proffered an appeal to this court in Criminal Appeal No. E008 of 2023, which was dismissed, with the court upholding both the conviction and the sentence imposed by the trial court.
4. The applicant has now come to this court seeking a review of the sentence that was imposed on him by the trial court and upheld by the high court on appeal. The application is premised on the grounds set out on its face and is supported by the affidavit sworn by the applicant on 13th February, 2025.
5. Briefly, the applicant contends that both the trial court and the appellate court failed to take into account his mitigation at the time of sentencing, and instead imposed on him a mandatory sentence



of fifteen (15) years' imprisonment under the *Sexual Offences Act*. He argues that this court has the jurisdiction to vary and revise the sentence by considering relevant mitigating factors, including the steps he has taken towards rehabilitation while in custody.

6. The application was canvassed by way of written submissions. In his submissions dated 25th August, 2025, the applicant asserts that he has maintained exemplary conduct and character during his incarceration, and has demonstrated a genuine commitment to reform, rehabilitation, and a complete change in attitude towards crime. On that basis, he urges the court to consider imposing a more lenient sentence.
7. The applicant submitted that he is remorseful and regrets his actions. He further stated that he is a first-time offender, married with two children who depend on him. He contended that this court is empowered under sections 216 and 329 of the Criminal Procedure Code to review a sentence already passed by taking into account the mitigation of an offender in each case, and therefore urged the court to review his sentence.
8. The respondent did not file written submissions but made brief oral submissions before this court on 18th December, 2025. Learned prosecution counsel, Mr. Muindi, submitted that the *Sexual Offences Act* prescribes a mandatory sentence for the offence of attempted defilement. He argued that the sentence imposed was lawful, fair, and just, and accordingly urged the court to uphold it.
9. I have duly considered the application, as well as the rival submissions made by the parties. Having done so, I find that the main issue for determination is whether this court has the jurisdiction to entertain the present application.
10. As stated herein above, after his conviction and sentence by the trial court, the applicant appealed to this court against his conviction and sentence, and his appeal was dismissed by Mbungi, J, on 19<sup>th</sup> July, 2024.
11. While dismissing the applicant's appeal, the honourable judge expressed himself as follows: "The court considered the appellant's mitigation and sentenced the appellant to serve 15 years imprisonment. The law provides for a punishment of a minimum of 10 years imprisonment. Given the age of the complainant and the circumstances under which the offence was committed, it was by good luck that the appellant did not penetrate the general organ of the complainant, his intentions were very clear from his actions leading to the act. I find no reason to disturb the term of 15 years imposed by the trial court. Therefore, the sentence is upheld. The upshot of the above is that I find the appeal has no merit, the same is dismissed."
12. From the foregoing, it is clear that the applicant, having failed in his appeal, he is now asking this court to review a decision or sentence that has been upheld by a court of concurrent jurisdiction.
13. Section 362 of the Criminal Procedure Code makes it clear that the revisional jurisdiction of this court, which is what the applicant in this case has invoked, is exercisable only in respect of decisions, orders, or sentences passed by subordinate courts, and not by superior courts, which include the High Court.
14. The provision states as follows:

"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."



15. It is therefore clear that this court lacks revisional jurisdiction over its own decisions or those of other superior courts. Based on the foregoing, it is evident that this court lacks the jurisdiction to entertain the present application.
16. Furthermore, Article 50 (2) (q) of *the Constitution*, provides that an accused person has the right to a fair trial,

“which includes the right, if convicted, to appeal or apply for review by a higher court as prescribed by law.”
17. It is clear from the above provision of *the constitution* that where an accused is not satisfied by the decision of a lower court, the said accused has an option of either appealing a conviction or sentence or applying for a review of the decision, but an accused person cannot appeal a decision and thereafter make an application for review of the same matter as is the case in the present application.
18. I find guidance in the case of John Kagunda Kariuki versus Republic (2019) KEHC 5480 (KLR); where Ngugi, J, (as he then was) stated as follows:

“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.”
19. Additionally, in Mohammed Abdille Hamud v Republic (2022) eKLR; the court when faced with a similar application, stated as follows:

“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 heard and determined. In John Kamau Gachuha v Republic [2019] eKLR the Court held as follows;

“... The applicant merely seeks the imposition of a more lenient sentence. This court has no revision jurisdiction over an appeal it has concluded. The applicant’s only option is to appeal in the Court of Appeal...” ..... The only remedy thus available to the Applicant now lies with the Court of Appeal should the applicant feel aggrieved by this Court’s determination on appeal. This court does not have jurisdiction to determine the issues raised in the application for a second time.”
20. This court became functus officio the moment it pronounced itself on the applicant’s appeal. The applicant, once he was dissatisfied with this court’s decision on appeal, his next step would have been to file a second appeal to the court of appeal and not file an application for review of his sentence to this court.
21. Having found that this court lacks jurisdiction to entertain the present application, the same is hereby struck out.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. T. W. OUYA, OGW**

**JUDGE**

In the presence of:

Mr. Mwakio – Respondent/State



Applicant present at Nyeri Maximum Prison  
Kelvin/Hamza – Court Assistant

