



REPUBLIC OF KENYA



**Kiragu v Republic (Criminal Revision E077 of 2025)
[2026] KEHC 5252 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL REVISION E077 OF 2025**

RL KORIR, J

APRIL 27, 2026

BETWEEN

HARUN MUNGETI KIRAGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Harun Mungeti Kiragu, was charged before Marimanti Principal Magistrate's Court in Criminal Case (SO) No.11 of 2017 with the offence of defilement contrary to section 8(1) as read with section 8(2) of *sexual offences Act* No.3 of 2006 (the Act). The particulars were that on 25th January 2017, the Appellant defiled PW1, a girl aged 2½ years old. He denied committing the offence but upon trial, he was convicted and sentenced to serve life imprisonment.
2. Dissatisfied with the conviction and sentence, the Applicant appealed to the High Court vide Chuka High Court Criminal Appeal No. 3 of 2018.
3. In a judgement dated 29th October 2019, Limo J, dismissed the appeal and upheld both conviction and sentence.
4. Undeterred, the Applicant appealed to the Court of Appeal a judgment dated 9th May, 2025 the court set aside the Appellant's conviction for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* and substituted therefore a conviction for the offence of incest contrary to the section 20(1) of the *sexual offences Act*.
5. The court further quashed the life sentence imposed upon the Appellant and substituted therefore a sentence of 20 years' imprisonment which was also deemed to run from 14th September 2017, being the date of his arrest and pre-trial custody.



6. The Applicant has now approached this court through a review Application dated 12th September 2025 seeking a further reduction or variation of his sentence.
7. In his home made Application, the Applicant invoked the jurisdiction of this court under Article 23(1) and Article 165 of *the Constitution*.
8. The Applicant urges that this court has the requisite jurisdiction to consider the mitigating circumstances including the fact that his long sentence would deny him the chance of being reintegrated as a useful member of society. That he risks wasting all his youthful years in prison. The Applicant further submitted that he was now reformed and undertakes to keep the peace in the community and be a law abiding citizen. He prayed for a probationary sentence for the remainder of his sentence.
9. The Application is opposed by the Respondent's through submissions dated 25th February, 2025.
10. The Respondents identified the only issue for determination being whether the Applicant was entitled to a sentence review and reduction.
11. The Respondent submitted that the sentence of 20 years was just and fair for the offence charged and that the sentence met the twin purposes of retribution and deterrence.
12. On whether the Applicant's imprisonment could be varied to a non-custodial sentence, the Respondent's submitted that the seriousness of the offence called for a custodial sentence. They prayed that the Application be dismissed.

Analysis and determination

13. I have already set out in extensio the background to this Application. The Applicant was charged 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 serve life imprisonment by the trial court. His appeal in the High Court was dismissed. Upon further or second appeal, the Court of Appeal substituted his conviction and reduced his sentence.
14. The Applicant's Application to this court must fail on two fronts. Firstly, in the hierarchy of courts, he has already been adjudged by the Court of Appeal. He cannot come back to this court on the merits of his case. The circumstances under which he could approach this court are circumscribed by Article 50 of *the Constitution* which provides as follows:-
 - (2) Every accused person has the right to a fair trial, which includes the right—
 - a. to be presumed innocent until the contrary is proved;
 - (b) to be informed of the charge, with sufficient detail to answer it;
 - (c) to have adequate time and facilities to prepare a defence;
 - (d) to a public trial before a court established under this Constitution;
 - (e) to have the trial begin and conclude without unreasonable delay;
 - (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
 - (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;



- (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (i) to remain silent, and not to testify during the proceedings;
 - (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
 - (k) to adduce and challenge evidence;
 - (l) to refuse to give self-incriminating evidence;
 - (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
 - (n) not to be convicted for an act or omission that at the time it was committed or omitted was not—
 - (i) an offence in Kenya; or
 - (ii) a crime under international law;
 - (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
- (3) -
- (4) -
- (5) -
- (6) - A person who is convicted of a criminal offence may petition the High Court for a new trial if—
- (a) the person’s appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - (b) new and compelling evidence has become available.
- (7) -
- (8) -
- (9) -

15. In this case, there was no allegation of violation of any constitutional rights. From my reading of the trial file, no such allegation was made all the way to the Court of Appeal. It is my finding therefore that the Application cannot be entertained by this court. There is no legal basis for the re-opening of the Applicant’s case.



16. In any case any inquiry into constitutional violation and trial ought to be brought through a Constitutional Petition and not a revision.
17. Secondly, the revisionary jurisdiction of this court is limited to decisions emanating from decisions of subordinate courts. Section 362 provides:
 - “362. 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.”
18. In this case, the Applicant’s case has gone all the way to Court of Appeal. He cannot come back to this court in the guise of revision.
19. Finally, the Applicant stated that he was serving a life sentence. That was inaccurate as his appeal has been heard and determined by the Court of Appeal. He is serving a sentence of 20 years deemed to run from 14th September 2017.
20. In the end, the revision has no merit and is dismissed.

Orders accordingly,

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

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R. LAGAT - KORIR

JUDGE

Ruling delivered in the presence of Applicant acting in person, Ms Rukunga for the Republic; Muriuki (Court Assistant)

