



**Jino v Republic (Miscellaneous Criminal Application
E017 of 2025) [2025] KEHC 8984 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2025**

**JN ONYIEGO, J
JUNE 25, 2025**

BETWEEN

ISSA JINO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence delivered by Honourable
S. Otuke on 28-09-2022 in Garissa law courts CMCR E008 OF 2020)*

RULING

1. The applicant herein was charged with the offence of defilement contrary to section 8(3) of the [sexual offences Act](#) No.3 of 2006. Particulars were that on 1st December 2020 at Adele area, Madogo sub-location, Tana North sub-county within Tana River County he intentionally and unlawfully caused his genital organ namely penis to penetrate the Vagina of M.I a girl aged 12 years.
2. The appellant faced an alternative charge of indecent act with a child contrary to Section 11 (1) of the [Sexual Offences Act](#). The particulars were that on 1st December 2020 at Adele area, Madogo sub-location, Tana North sub-county within Tana River County he intentionally and unlawfully touched the private part namely Vagina of M.I a girl aged 12 years.
3. Having denied the charge, the matter proceeded to full trial. Consequently, he was convicted and sentenced to 18 years imprisonment. Aggrieved by the said decision, he appealed to this court vide criminal appeal No. E055 of 2022. Upon canvassing the appeal, the Hon. Justice Riechi dismissed the appeal in its entirety and upheld both the conviction and sentence.
4. Undeterred, the applicant moved to this court once again vide an undated notice of motion seeking review of his sentence on grounds that he has since reformed and that the judiciary sentencing policy guidelines demands that his mitigation be considered.



5. In response, the respondent asserted that the application was not merited considering that the same issues had been considered during the hearing of his appeal and that the court was functus officio.
6. I have considered the application herein and the response thereof. This court is being asked to revisit the issue of sentence after having dismissed it on appeal. The revision application is now pleaded in the format of mitigation.
7. The law governing revision in a criminal case is section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“ 362. Power of High Court to call for records

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.

364. Powers of High Court on revision

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:



Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
 - (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
 - (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.
8. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe versus Republic.
9. In the circumstances of this case, the court is being asked to exercise sympathy or mercy. That is not a ground for revision. If it is on account of the sentence being excessive, the same is spent as it was dealt with on appeal. In a nut shell, it is my finding that the application is not merited and the court is functus officio hence the same is dismissed.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF JUNE 2025

J. N. ONYIEGO
JUDGE

