



**Ouma v ODPP (Criminal Review E099 of 2024)
[2025] KEHC 11379 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL REVIEW E099 OF 2024**

**JN NJAGI, J
JULY 29, 2025**

BETWEEN

RODGERS OUMA APPLICANT

AND

ODPP RESPONDENT

RULING

1. The Applicant herein has filed an undated sentence review application seeking for orders that;
 1. The court be pleased to review the sentence imposed by this court and grant him a more lenient sentence informed by the mitigation of the applicant and the unique facts and circumstances of his case pursuant to Article 50(2) (p) and (q) of the Constitution of Kenya 2010.
 2. That the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the Criminal Procedure Code and also pursuant to the decision in the case of Jona & 7 others v Kenya Prisons Service & 2 others (petition 15 of 2020 (2021) KEHC 457(KLRF))
 3. That the court be pleased to grant the Applicant probation orders if his circumstances so fit.
2. The grounds in support of the application are that the applicant was convicted for the offence of rape contrary to Section 3(1)(a), Section 3(1)(c) and 3(3) of the Sexual Offences Act No 3 of 2006 in Criminal Case No 19 of 2019 in Lamu SPM’s Court and sentenced to life imprisonment on 3/5/2020 which was on the 30/7/2021 substituted to 25 years imprisonment by this court upon an appeal.
3. The applicant contends that paragraph 4.8.14 of the Sentencing Policy Guidelines 2023 provides that all convicts as specified in the relevant instructing instruments can apply for resentencing.
4. That paragraph 4.8.18 of the same provides that resentencing cases shall be handled by the sentencing court.



5. That the same paragraph provides that every offender shall have the right to appeal a re-sentencing ruling to a higher court.
6. The applicant in his application attached a mitigation statement in which he states that he is a first offender and remorseful for the occurrence of the incident over which he was convicted. He pleads for mercy and forgiveness. He says that he has now served over 4 years of the sentence imposed on him. That the time spent in custody was not computed during sentencing and he pleads with the court to make an intervention in that regard.
7. The applicant says that he has undergone rehabilitation and transformation while serving sentence. That he is a teacher at the prison teaching students Christian Religious Education for secondary school. That he is a deacon and a paralegal promoting access to justice to his fellow inmates. That he is now reborn as a Christian. That he has a clean prison record without blemish.
8. The applicant mitigated that the offence he was convicted of does not fall within the category of violent crime. That he has a young family of a son and a wife and has an aging mother. That his family has been affected by his prolonged absence.
9. A sentence Review Report was filed by a Probation Officer, Garsen, which recommended a non-custodial sentence. The Applicant made reliance on the following cases. Hiribae Muchinga Arbicho HCCr Revision No 598 of 2012, where rehabilitation and family circumstances warranted sentence revision. Kenga Ngala mwagandi Criminal Revision No 32 of 2017, wherein a first offender's exemplary conduct justified early release. Tolo Vs Republic (Criminal Revision E176 of 2024), prioritizing non-custodial sentences for rehabilitation offenders.
10. The Respondent relied on the report of the Probation Officer.
11. I have considered the application. The applicant is seeking for review of sentence. The High Court has power to review orders of subordinate courts under the provisions of Sections 362 and 364 of the [Criminal Procedure Code](#). However, the power of review is only limited to correcting errors committed by the subordinate courts and ensuring that no injustice is visited on an accused person during trial.
12. The applicant in his application seeks for review of sentence imposed by the High Court upon an appeal by the applicant. It is to be noted that the Applicant mitigated before the Subordinate Court that sentenced him. The High Court must have considered his mitigation and the relevant law when it reduced the sentence to 25 years imprisonment. In my view, this court has no power of interfering with the sentence imposed by a court of equal jurisdiction unless there are special circumstances to prompt the court to do so. However, the court can consider an issue that was not considered by the High Court during the appeal or by the lower court during the sentenced. If the sentence of the High Court was excessive, that is an issue for appeal to the Court of Appeal and not for review. The applicant has not shown any injustice in his sentencing as to warrant a review.
13. The applicant says that the period spent in custody was not put into account when the court sentenced him as required by Section 333(2) of the [Criminal Procedure Code](#). This court is unable to confirm the veracity of this statement as the applicant did not file copies of the judgment of the lower court and the High Court.
14. The court thereby makes an order for the applicant to file copies of both judgments of the High Court and lower court for the court to check whether Section 333(2) of the [CPC](#) was complied with when the applicant was sentenced. Save for that the application is dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 29TH DAY OF JULY 2025.



J. N. NJAGI

JUDGE

In the presence of:

Miss Mkongo for Respondent

Applicant: present in person at G.K. Prison Manyani

Court Assistant: Kambi

