



**Issack v Republic (Miscellaneous Criminal Application
E026 of 2023) [2024] KEHC 1220 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 1220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2023**

**JN ONYIEGO, J
JANUARY 31, 2024**

BETWEEN

ABUBAKAR BASHIR ISSACK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged and found guilty of the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* No. 3 of 2006. Particulars were that on 10.01.2018 at [Particulars Withheld], Mandera East Sub – County, Mandera County intentionally caused his penis to enter the anus of AAM, a boy aged 2 years.
2. The trial court sentenced the applicant to thirty (30) years imprisonment with effect from 10.01.2018 being the date of his arrest.
3. The appellant approached this court seeking an alternative sentence in reference to the recent development in resentencing pursuant to the findings in the cases of *Philip Mueke Maingi & 5 Others v Republic* Petition No. E017 of 2021 at Machakos and *Andrew Wachira & 9 Others v Republic* Petition No. 97 of 2021 at Mombasa.
4. At the hearing of the application, the applicant instead urged this court to consider reducing his sentence to include the period spent in remand in custody. Mr. Kihara for the respondent did not object to the same.
5. I have considered the application, the oral submissions and the authorities cited. The main issue is whether this Honourable Court has jurisdiction to determine the application herein.



6. 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 was heard and determined. It then follows that the applicant is seeking this court to sit in an appellate capacity by reviewing its own decision.
7. In *John Kamau Gachuba 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...”
8. In *John Kagunda Kariuki v Republic* [Supra] eKLR the Court held as follows;

“In the present case, 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...”
9. The only remedy available to the applicant in the circumstances of this case is to approach the court of appeal as this court does not have jurisdiction to determine the issues raised in the application. In the foregoing, it is my finding that the application filed on 02.10.2023 lacks merit and the same is hereby dismissed.

Dated, signed delivered virtually this 31st day of January 2024

J. N. ONYIEGO

JUDGE

