



**Juma v Republic (Criminal Revision E001 of 2024)
[2024] KEHC 4043 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4043 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E001 OF 2024
GL NZIOKA, J
APRIL 25, 2024**

BETWEEN

FRANCIS MICHAEL JUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of sexual assault contrary to section 5(1)(a)(i) of the [Sexual Offence Act](#) No. 3 of 2006 (herein the Act) in the main count and an alternative count of committing an indecent act with a child contrary to section 11(1) of the [Act](#). The particulars of each count are as per the charge sheet.
2. He pleaded not guilty and the case was fully heard. He was subsequently found guilty, convicted and sentenced to serve ten (10) years imprisonment.
3. The applicant now seeks for sentence review. The court has power to review sentence under section 362 and 364 of the [Criminal procedure Code](#) (Cap 75) Laws of Kenya. Section 362 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.”
4. Further, section 364 of the [Code](#) provides as follow: -
 - “(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.
 - (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.”
5. Therefore a sentence will only be reviewed if it is either incorrect, illegal or improper. Thus, the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
 6. In the instant matter, the sentence for the offence of which the applicant was charged with imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life.
 7. As a result, the sentence is lawful and legal. Furthermore, it is the minimum sentence provided by the law. Even then the applicant was only sentenced on 29th November, 2023. He has not served one (1) year of the ten years. In addition, the pre-sentence report recommending his release on a non-custodial sentence is not objective as it does not incorporate the views of the victim or the family. Therefore it is rejected.
 8. In the given circumstances, the application is herein dismissed for lack of merit. However, if the applicant was in custody during the trial and the period he was in custody was not considered, it should be factored in the custodial period as required under section 333 (2) of the *Criminal Procedure Code*.

DATED, DELIVERED AND SIGNED THIS 25TH DAY OF APRIL, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:-

The applicant present virtually



Mr. Abwajo for the respondent

Ms Ogutu: Court Assistant

