



REPUBLIC OF KENYA



KENYA LAW
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**Munyao v Republic (Criminal Revision E139 of 2024)
[2025] KEHC 4836 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E139 OF 2024
FN MUCHEMI, J
APRIL 24, 2025**

BETWEEN

JOHN MUNYAO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination is dated 14th February 2024 in which the applicant seeks to have his sentence reviewed.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offences Case No. 2612 of 2011 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the [Sexual Offences Act](#) and was sentenced to life imprisonment on 19th July 2017. The applicant appealed to Kiambu High Court Criminal Appeal No. 19 of 2018 which appeal was dismissed on 22nd June 2018 for lack of merit. He then filed the 2nd to the Court of Appeal in Nairobi *vide Criminal Appeal No. 78 of 2020* and the appeal was dismissed on 3rd February 2023.
3. The applicant states that he has been in prison since the date of arrest being 5th June 2011 and he has undergone various rehabilitation programmes. The applicant prays that the court reviews his sentence to a lenient sentence taking into consideration the time he has been in prison since the date of arrest.
4. The applicant further prays that the court directs that he serves the remaining sentence under community supervision as he is rehabilitated and not a threat to society.
5. The respondent opposes the application and urges the court to dismiss the same as the applicant exhausted his appeals having lodged an appeal in the Court of Appeal.



The Law

6. This court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

7. The applicant has come to this Honourable court by way of review provided for under Article 50 of the Constitution. It provides:-

(2) Every accused person has the right to a fair trial, which includes the right:-

(q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.

8. In the case of *Samuel Kamau Macharia vs KCB & 2 Others*, Civil Application No. 2 of 2011, it was stated:-

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

9. The applicant herein was convicted for the offence of defilement in *Thika CM Criminal Sexual Offences Case No. 2612 of 2011* and sentenced to life imprisonment. He appealed to the High Court in Kiambu *vide* Criminal Appeal No. 19 of 2018 and the court dismissed his appeal and upheld the conviction and sentence of the offence of defilement on 22nd June 2018. Subsequently after, the applicant lodged an appeal in the Court of Appeal being *Criminal Appeal No. 78 of 2020* and the same was dismissed on 3rd February 2023 the court thereby upholding the conviction and life sentence of the trial court.

10. Article 50(2)(q) of the Constitution is of relevance herein that an application for review of sentence or any other order falls within the jurisdiction of a higher court other than the one that sentenced the applicant. The Court of Appeal dealt with both the conviction and sentence in the applicant’s 2nd appeal.

11. The Court of Appeal being superior to this High Court cannot entertain an application for review in the circumstances.

12. Article 50 (2) of the Constitution is very clear that a convicted person has a right to file an appeal or apply for review. The applicant herein has gone through two levels of appeal and exhausted his appeal rights of appeal. Having appealed, the applicant lost his right of review of sentence.

13. I am of the considered view that this application dated 14th February 2024 lack merit and it is hereby dismissed with no orders as to costs.

14. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF APRIL 2025.

F. MUCHEMI

JUDGE

