



**Murigi v Republic (Criminal Revision E131 of 2024)
[2025] KEHC 5703 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E131 OF 2024
FN MUCHEMI, J
MAY 8, 2025**

BETWEEN

SAMSON MUBAA MURIGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination dated 27th June 2024 seeks to have the applicant’s sentence reviewed pursuant to Section 333(2) of the [Criminal Procedure Code](#).
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offences Case No. 1164 of 2016 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the [Sexual Offences Act](#) and was sentenced to serve 20 years imprisonment. The applicant appealed in Kiambu H.C. Criminal Appeal No. 71 of 2017 whereas the said appeal was dismissed on 13th February 2018. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No. 33 of 2019 whereas the said second appeal was dismissed.
3. The applicant states that he has been in prison since the date of arrest being 26th February 2016 and he was sentenced on 19th July 2017, a period of 1 year and 4 months, which was not considered during sentencing. The applicant prays that the court reviews his sentence to a lenient sentence taking into consideration that prescribed minimum mandatory sentences do not give the trial court discretion to determine an appropriate sentence imposed.
4. The applicant further states that he is remorseful and he has undergone various rehabilitative programmes.
5. The respondent opposes the application as the issue of sentencing has been dealt with by the high Court and Court of Appeal. Therefore the application is incompetent and ought to be struck out.



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 v 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 by the trial court in Thika CM Criminal Case No. 1164 of 2016 and sentenced to twenty (20) years imprisonment. He appealed to the High Court in Kiambu *vide Criminal Appeal No. 11 of 2018* and the court dismissed his appeal and upheld the conviction and sentence of the offence of defilement on 13th February 2018. The applicant filed a second appeal in the Court of Appeal, Nairobi *vide* Criminal appeal No. 33 of 2019 whereas the court dismissed his appeal and upheld the conviction and sentence of defilement on 22nd May 2020.

10. I have perused the judgment of the Court of Appeal and noted that the issue of the period spent in custody was of one of the grounds of appeal. The court affirmed the sentence of twenty (20) years imprisonment after considering all the material before it.

11. What then does the law provide in regard to review of sentences or orders in a criminal case? Article 50(2)(q) of *the Constitution* is of relevance as discussed above. It provides that an application for review shall be filed before a higher court. Having exhausted the chances of appeal in the High Court and the Court of Appeal, the applicant has now come back to the High Court for review. Under Article 50 (2) (g) the applicant was entitled to either a review of an appeal but not to both remedies. He chose to appeal and as such, he lost his chance of review the moment he appealed to the high Court.

12. Furthermore, this court cannot review a decision of the Court of Appeal and reduce the sentence to a lesser sentence as requested by the applicant. He has no legal right of review as I have just stated. The applicant has engaged in the game of back and forth with a view of trying his luck in the courts of law.

13. Consequently, I find that this application is incompetent, misconceived and not properly before this court.

14. It is hereby struck out.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

