



**Ngetich v Republic (Miscellaneous Criminal Application
E005 of 2025) [2025] KEHC 6203 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2025
JK NG'ARNG'AR, J
MAY 20, 2025**

BETWEEN

LEONARD KIPKEMOI NGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of defilement contrary to section 8 (2) of the [Sexual Offences Act](#). He was convicted of the offence and sentenced to serve life imprisonment by Hon. P. Achieng, Senior Principal Magistrate.
2. The Applicant appealed against the conviction and sentence vide *Bomet High Court Criminal Appeal Number 26 of 2019*. In a Judgement dated 30th September 2021, this court (Korir J.) dismissed the Appeal and upheld the Applicant's conviction and sentence.
3. The Applicant applied for re-sentencing stating that the life sentence was declared unconstitutional and that the life sentence had violated his rights as provided for under Article 50 (2) (p) of the [Constitution](#) of Kenya. He relied on [Evans Nyamari Ayako v Republic](#) [2017] KEHC 5570 (KLR) and [Manyeso v Republic](#) [2023] KECA 827 (KLR).

The Applicant's submissions

4. In his submissions dated 24th April 2025, the Applicant submitted that the life sentence violated his right to human dignity and freedom from inhumane punishment. He relied on Article 28 of the [Constitution](#) of Kenya, [Muruatetu v Republic](#) (2017) eKLR and *Vinter and others v The United Kingdom* (Applications no's 66069, 130/10 and 3896/10). That an indeterminate life sentence without the hope of release was inhumane punishment.



5. It was the Applicant's submission that the Penal Code did not define what constituted a life sentence and the ambiguity violated Article 50 (2) (p) of the Constitution of Kenya. It was his further submission that a life sentence removed the court's ability to assess the circumstances of a case. He relied on Gechu v Republic [2024] KEHC 749 (KLR).
6. The Applicant submitted that a life sentence was incompatible with the goals of sentencing which were rehabilitation and reintegration. He further submitted that the life sentence was harsh.

The Respondent's submissions

7. Through their submissions dated 2nd April 2025, the Respondent submitted that this court had already heard and determined the Applicant's Appeal on both his conviction and sentence and was thus functus officio. He relied on John Kagunda Kariuki v Republic (2019) eKLR and Daniel Otieno Oracha v Republic (2019) eKLR. That the Court of Appeal had the capacity to hear the Applicant's present Application and not this court.

Analysis and determination

8. As earlier stated in this Ruling, the Applicant having been charged with the offence of defilement was convicted and sentenced by the trial court in Bomet. He appealed against the conviction and sentence in this court and his appeal was dismissed.
9. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under sections 362 to 364 of the Criminal Procedure Code. This court therefore does not have the jurisdiction to review its own decision. In John Kagunda Kariuki v Republic [2019] KEHC 5480 (KLR), Ngugi J. (as he then was) held that: -

“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”.

10. In the case of Daniel Otieno Oracha v Republic [2019] KEHC 865 (KLR), the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that: -

“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....

The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”



11. I am further persuaded by Njuguna J. in *Lawrence Kariuki Njeru v Republic* [2021] KEHC 6118 (KLR), where she held that: -

“.....Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors.

The petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”

12. This court (Korir J.) has already considered and upheld the Applicant’s sentence during his Appeal (*Bomet High Court Criminal Appeal Number 26 of 2019*). Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.

13. In the end, I find that this court has no jurisdiction to review the Judgement of Korir J. dated September 30, 2021 and therefore the Application dated January 24, 2025 lacks merit and the same is dismissed.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 20TH DAY OF MAY, 2025.

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HON. JULIUS K. NG’ARNG’AR

JUDGE

Ruling delivered in the presence of Mr. Njeru for the State, Applicant present in person and Bore for the Applicant. Siele/Susan (Court Assistants).

