



**Wangari v Republic (Miscellaneous Criminal Application
E066 of 2024) [2025] KEHC 6979 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E066 OF 2024**

FN MUCHEMI, J

MAY 22, 2025

BETWEEN

DAVID KAHURA WANGARI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. This application dated 13th June 2024 seeks for review of sentence. The applicant is currently serving sentence of life imprisonment at Kamiti Maximum prison.
2. The applicant was convicted in Thika Chief Magistrate Criminal Case No. 2303 of 2010 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* and was sentenced to serve fifteen (15) years imprisonment. The applicant He appealed to the High Court in Nairobi Criminal Appeal No. 254 of 2011 and the appeal was dismissed on 3rd October 2013 and the sentence of 15 years set aside and substituted with life imprisonment. The applicant then appealed to the Court of Appeal in Nairobi Criminal Appeal No. 8 of 2015 which appel was dismissed on 2nd December 2016.
3. The applicant urges the court to review his sentence to a lenient sentence taking into account the time he has been in prison since date of arrest in the year 2010.
4. The respondent opposes the application as the issue of sentencing has been dealt with by the High Court and Court of Appeal and as such, this court has no jurisdiction to interfere with the current sentence the applicant is serving. The respondent argues that this application is incompetent.



The Law

5. This court is empowered by Article 165(6) of *the Constitution* of Kenya to review a decision of a subordinate court but not that of a superior 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.
6. 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.
7. 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.”
8. The applicant was convicted by Thika Chief Magistrate, in Criminal Case No. 2303 of 2010 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* and was sentenced fifteen (15) years imprisonment. He appealed to the High Court Nairobi in Criminal Appeal No. 254 of 2011. The appeal was dismissed on 3rd October 2013 upholding the conviction and setting aside his sentence for 15 years and substituting it with life imprisonment. The applicant then appealed to the Court of Appeal Nairobi Criminal Appeal No. 8 of 2015. The said appeal was dismissed on 2nd December 2016.
9. It therefore follows that this Honourable court cannot review a decision of the Court of Appeal and reduce the sentence to a lesser sentence as applied herein. Review can only be done by a court of higher jurisdiction. I hold that this court lacks jurisdiction to review the judgment of the Court of Appeal.
10. This application is therefore, incompetent and misconceived. It is hereby struck out with no orders as to costs.
11. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22ND DAY OF MAY 2025.

F. MUCHEMI

JUDGE

