



**JKC v Republic (Criminal Revision E117 of 2024)
[2025] KEHC 8091 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E117 OF 2024
FN MUCHEMI, J
JUNE 5, 2025**

BETWEEN

JKC APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 21st March 2024 seeks for orders of review of sentence on grounds that the applicant has reformed for the period he has been in prison and wishes to be re-integrated in society.
2. The applicant was convicted on 10th July 2008 by Thika Chief Magistrate, in Criminal Case No. 2675 of 2008 with the offence of incest contrary to Section 20(1) of the *Sexual Offences Act* and was sentenced to life imprisonment. The applicant appealed to the High Court in Nairobi being Criminal Appeal No. 249 of 2008 and the appeal was dismissed on 27th July 2011. The applicant subsequently filed another appeal at the High Court in Kiambu Criminal Appeal No. 95 of 2016 which appeal was dismissed on 3rd May 2017.
3. The applicant states that he is remorseful, reformed and rehabilitated as he has served a sixteen year sentence and is ready for social re-adaptation.
4. 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.
5. The respondent filed grounds of opposition dated 6th March 2025 and argues that the instant court became functus officio and has no jurisdiction to resentence since a court of concurrent or similar



jurisdiction, that is, the Milimani High Court vide Appeal No. 135 of 2009 upheld the sentence of the trial court. The respondent further argues that asking the current court to resentence is equivalent to asking the court to sit as an appellate court against its own judgment and determine whether the appeal has chances of success.

6. The respondent states that the issue of sentence has been dealt with conclusively to the effect that the appeal on conviction and sentence had no merit in the High Court. The respondent further states that the applicant is just testing the waters and trying his lack thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.
7. Parties put in written submissions.

The Applicant's Submissions

8. The applicant refers to the cases of *Julius Kitsao Munyeso v Republic* Criminal App. No. 12 of 2021; *Geoffrey Murunga v Republic* Criminal App. No. 357 of 2021; *P.W. v Republic* (2019) eKLR; *Evans Nyamari Ayako v Republic* Criminal App. No. 22 of 2018 and *Peter Ngaruiya v Republic* Criminal Appeal No. E203 of 2022 and submits that life imprisonment is unconstitutional and ought to be substituted with a determinate sentence.

The Respondent's Submissions.

9. The respondent reiterates the contents of her affidavit and submits that the instant application is an abuse of the court process and ought to be dismissed.

The Law

10. 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.

11. 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.

12. 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.”

13. The applicant herein was convicted for the offence of incest by the trial court in Thika CM Criminal Case No. 2675 of 2008 and sentenced to life imprisonment. He appealed to the High Court in Nairobi Criminal Appeal No. 249 of 2008 and the appeal was dismissed on 27th July 2011. The applicant subsequently appealed to the High Court in Kiambu Criminal Appeal No. 95 of 2016 and the appeal was dismissed on 3rd May 2017.



14. Article 50(2)(q) of the *Constitution* quoted in the foregoing paragraph prohibits review where a convict has gone through the appeal process. The applicant herein has filed two different appeals in two high courts, that is Nairobi and Kiambu both of which originate from the same CM Thika Criminal Case No.2625 of 2008. The said appeal was dismissed.
15. The applicant is aware that he has flouted the law by filing an appeal twice in different courts. He is also aware that he is not entitled to review in this application. It is notable that the applicant has come to this court seventeen (17) years after conviction. As the respondent has said, the applicant is on a mission since date of conviction on 10th July 2008 to try his luck in several courts which efforts are aimed at serving a lesser sentence. These are efforts which are futile in that the law and current jurisdiction does not allow. The applicant has wasted scarce judicial time of about four courts to date which is unacceptable and should not be entertained.
16. Consequently, I find this application misconceived, incompetent and a waste of time of the court.
17. The application dated 21st March 2024 is hereby struck out.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF JUNE 2025.

F. MUCHEMI

JUDGE

