



**Mburu v Republic (Miscellaneous Criminal Application  
E053 of 2022) [2025] KEHC 8178 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8178 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E053 OF 2022  
RN NYAKUNDI, J  
JUNE 12, 2025**

**BETWEEN**

**SAMWEL NJUGUNA MBURU ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation

M/s Sidi for the State

1. Before this court is an application in the case as follows:
  - i. That the application be certified urgent and service thereof be dispensed with it to be heard in the first instance
  - ii. That the honorable court be pleased to determine the petition for re-hearing of the sentence imposed against me
  - iii. That the petitioner has been in prison for a long time
  - iv. I beg to be present during hearing thereof
2. It is further annexed by an affidavit sworn which states as follows:
  - i. That I am Kenyan male of sound of mind hence competent to swear this affidavit
  - ii. That I was charged for the offence of defilement contrary to section 8 (1) (2) of the SOA no. 3 of 2006, convicted and sentenced to life imprisonment CM'S Eldoret on 1/07/2009 by Hon. Alego



- iii. That after the dissatisfaction of the law court verdict, I opted to lodge an appeal to the high court at Eldoret vide appeal no. 104/2009
- iv. That my appeal was against conviction and sentence but was dismissed on 24/3/2010 by Hon. M.A. Angawa
- v. That I now still approach the same high court with the aim of sentence re-hearing as per Machakos High court ruling in petition no. E017/2021
- vi. That, I am remorseful, repentant and reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency
- vii. That it's my humble prayer that I be granted a fair opportunity to argue my petition
- viii. That what I have deposed herein is true to the best of my knowledge information and belief

## **Jurisdiction**

### **Facts**

- 3. I Samwel Njuguna Mburu do hereby file this petition in your most respective docket from original SO case file no. 2862/2009 at CM'S Eldoret whereby I convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8 (1) (2) of the SOA no. 3 of 2006
- 4. Upon appealing to the high court at Eldoret against conviction and sentence, my appeal vide HCCRA. No. 104/2009 was dismissed entirety
- 5. I now pray to file a petition for sentence review based on the following grounds: -  
Mitigating grounds of petition:  
Your lord/lady: -
  - 1. That I am a first offender and thus beg for leniency
  - 2. That, I am remorseful, repentant and reformed as I have learnt to take responsibility of my own actions
  - 3. That the sentenced meted upon me was too harsh considering my mitigating factors and circumstances
  - 4. That the sentenced meted upon me was too harsh considering that I am aged, sole bread winner and frequently sick as per attached medical document
  - 5. That I am praying that may the honorable court consider review of sentence as I rely on the jurisprudence of high court petition no. E017/2021 at Machakos on matters. Minimum-maximum mandatory provisions under the *sexual offences Act* no. 3 of 2006
  - 6. That I am seeking for sentence review in accordance to section 362, 364(1) & 365 of the CPC cap 75 laws of Kenya in reliance to article 27(1) (2) (4), 22(1), 23(1), 25c, 50(1) (2) and 51(1) (2) of *the constitution* of Kenya 2010
  - 7. That I rely on the sentencing policy guidelines 2016 to review my sentence
  - 8. That more grounds to be adduced at hearing thereof and determination of the petition
- 6. Orders Sought: -



- i. That I am seeking orders for review of sentence as under section 362, 364(1) & 365 of the CPC cap 75 laws of Kenya in reliance to article 27(1) (2) (4), 22(1), 23(1), 25c, 50(1) (2) and 51(1) (2) of the constitution of Kenya 2010 among other enabling laws
- ii. That I am seeking orders for review of sentence u/s 39(2) of SOA no. 3 of 2006 and be admitted on non-custodial basis or/and such other orders the honorable court may deem fit
- iii. That may this honorable court be pleased to consider the provisions of the sentencing policy guidelines 2016 published by the Kenya judiciary and invoke the provisions of article 165(3) a, b, d & 258(1) of the constitution of Kenya 2010 and reduce my sentence to more reasonable terms

**Reasons Wherefore**

7. I pray that may my petition be allowed, sentence set aside and be substituted by probatory basis or set me free and/or other such orders that the court may deem fit

**Decision**

8. The applicants appeal was summarily rejected under section 352(2) of the CPC. Therefore, his remedy lies with the court of appeal. There is no evidence that the application satisfies the criteria outlined in article 50 (6) (a), (b) of the constitution. I considered this application res-judicata.
9. It is ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12<sup>TH</sup> DAY OF JUNE 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

