



**Mwaura v Republic (Criminal Revision E138 of 2024)
[2025] KEHC 8095 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E138 OF 2024
FN MUCHEMI, J
JUNE 5, 2025**

BETWEEN

PETER CHEGE MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is undated in which the applicant seeks to have his sentence reviewed under Article 50 (2) (9) of the *Constitution* and under Section 362 of the *Criminal Procedure Code*.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offence Case No 51 of 2018 of the offence of attempted defilement contrary to Section 9(1) as read with 9(2) of the *Sexual Offences Act* No 3 of 2006 and was sentenced to serve ten (10) years imprisonment.
3. The applicant herein seeks for review of sentence based on the grounds that he has reformed while in prison among other grounds where he pleads for leniency in that he was a first offender at the time of sentencing.

The Applicant's Submissions.

4. The applicant relies on the cases of *R v Otieno* (1983), *Francis Muruatetu & another v Republic* [2017] eKLR and *Michael Kalewa v Republic* [2016] eKLR and submits that he is a first offender, he is remorseful and has undergone various rehabilitative programmes. The applicant further submits that he was arrested on 26/5/2018 and sentenced on 6/12/2023, which period, the trial court did not consider during sentencing. He therefore urges the court to review his sentence as sought in the application. In his submissions, the applicant seeks for orders under Section 333(2) of the *Criminal Procedure Code*.



The Law

5. Article 165 (6) of the [Constitution](#) provides: -

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial unction but not over a superior court.”

Article 50(2) (p) provides: -

“The benefit of the least severe of the prescribed punishment for the offence, has changed between the time the offence was committed and the time of sentencing.”

Section 362 of the [Criminal Procedure Code](#) provides: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

6. In regard to the review on the issue of mitigation and resentencing, the applicant relies on the case of *Edwin Wachira & 10 others v The Director of Public Prosecutions* where the High Court Mativo, J held that a convict in a sexual offences case can petition to the High Court for mitigation and resentencing. It is important to note that this decision has been overruled by the Supreme Court and it is no longer applicable. In the Supreme Court Petition No E002 of 2024 [Republic v Manyeso](#), the court held that resentence or review under the [Francis Karioko Muruatetu](#) Supreme Court Principles is not applicable to defilement and robbery convicts. This decision made recently, has overturned the Court of Appeal decision of *Manyeso v Republic* among others.
7. It is therefore, trite law that a person convicted of the offence of defilement shall be sentenced as per Section 8 of the [Sexual Offences Act](#) based on the age of the victim. Under Article 163 (7) of the [Constitution](#) this court is bound by the decisions of the Supreme Court.
8. I therefore find that this application incompetent and misconceived and it is hereby struck out.
9. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

