



**Serobii v Republic (Miscellaneous Criminal Application
E023 of 2024) [2025] KEHC 8090 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2024**

FN MUCHEMI, J

JUNE 5, 2025

BETWEEN

JOHN SEROBII APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 28th February 2024 in which the applicant seeks for orders of review of sentence on grounds that he has reformed for the time he has been in prison.
2. The applicant was convicted by Thika Chief Magistrate in Criminal Case No 437 of 2011 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* and was sentenced to life imprisonment. The applicant appealed against sentence in Nairobi High Court in Criminal Appeal No 297 of 2011 and the appeal was dismissed on 19th June 2014. The applicant then filed a second appeal in the Court of Appeal, Nairobi Criminal Appeal No 26 of 2015 and the said appeal was dismissed on 31st July 2015.
3. The applicant states that he has been in custody since the date of arrest, 18th November 2011 and has undergone various rehabilitation programmes. The applicant urges the court to review his sentence and grant him a lenient sentence taking into account the time he spent in custody since the date of his arrest. The applicant further states that he is an old man of 74 years and the situation in prison is unbearable for him.
4. The respondent filed grounds of opposition dated 6th May 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 297 of 2011 upheld the sentence of the trial court which was confirmed by the Court of Appeal vide Appeal No 26 of 2015. 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.

5. 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 both in the High Court and Court of Appeal. 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.
6. Parties put in written submissions.

The Applicant's Submissions

7. The applicant refers to the cases of *Julius Kitsao Manyeso v Republic* Criminal Appeal No 12 of 2021 and *Evans Nyamari Ayako v Republic* Criminal Appeal No 22 of 2018 and submits that life imprisonment is unconstitutional and the same ought to be translated to mean 30 years. In view of the emerging jurisprudence on the issue of the mandatory nature of sentences, the applicant seeks the instant court to review his sentence in line with the case of *Francis Muruatetu v Republic* [2017] eKLR and *William Okungu Kittiny* Criminal Appeal No 56 of 2013.
8. The applicant further relies on the case of *Wilson Kipchirchir Koskei v Republic* [2019] eKLR and submits that he is 75 years old and being in prison is unbearable for him. Relying on Section 333(2) of the *Criminal Procedure Code* and the cases of Petition No 15 of 2020 *Vincent Jona Sila & 87 others* and *Abamad Abolfathi Mohammed & another v Republic* (2018) eKLR, the applicant requests the court to take into account the period he spent in custody since the date of his arrest on 18th January 2011.

The Respondent's Submissions.

9. The respondent reiterates what she has deponed in 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 in the Chief Magistrate Court in Thika in Criminal Case No 437 of 2011 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act*. The applicant was sentenced to life imprisonment and being aggrieved by the conviction and sentence appealed to the High Court in Nairobi being Criminal Appeal No 297 of 2011. The court heard the appeal and dismissed the same on 19th June 2014. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No 26 of 2015 and the same was dismissed on 31st July 2015.
14. Article 50(2)(q) of the *Constitution* provides that a convict has the option of either applying for review from a higher court or appealing. This means that both options under this constitutional provision are not available to a convict. Only one is available.
15. It therefore follows that this Honourable court has no jurisdiction to review a decision of the High Court or that of the Court of Appeal to reduce sentence to a lesser one as sought by the applicant.
16. Consequently, I find this application incompetent and misconceived and it is hereby struck out.
17. It is hereby so ordered.

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

**F. MUCHEMI
JUDGE**

