



REPUBLIC OF KENYA



Ateka v Republic (Revision Case E260 of 2024) [2025] KEHC 9454 (KLR) (1 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

REVISION CASE E260 OF 2024

S MBUNGI, J

JULY 1, 2025

BETWEEN

WYCLIFE ANYEMBE ATEKA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal against the Conviction and Sentence in Butere CM's Court
SO No. 63 of 2014 by Hon.E. S Olwande -Senior Principal Magistrate)*

RULING

1. The applicant herein filed a notice of motion application dated 4th June 2024 seeking a review of the criminal case no 63 of 2014, where he had been charged with the offence of defilement contrary to section 8 (1) (2) *Sexual Offences Act* No 3 of 2006.
2. He avers that under Article 50 (2) (p) (q) of the *Constitution*, he had the right to benefit from a less severe sentence and have his sentence reviewed.
3. He claims that the court sentence was too harsh and not lenient. He stated that he had undergone abdominal surgery and is a sickly man.
4. He admitted that he never filed an appeal with the Court of Appeal, and he now seeks a revision of the sentence.

Analysis and Determination

5. I have considered the application as well as the response by the Prosecution counsel.
6. The appellant herein had been charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *sexual offences Act* where he had been charged with the defilement of a girl aged 3 years.



7. On 28th October 2014, the trial court sentenced him to life imprisonment, and the applicant never appealed the sentence nor the conviction.
8. The powers of the High Court in revision are contained in Sections 362 through 366 of the *Criminal Procedure Code* (cap.75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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”.
9. What the High Court can do under its revision jurisdiction is stated under Section 364 of the *Criminal Procedure Code* Cap 362, which states as follows: -

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –

 - a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence.
 - b. In the case of any order other than an order of acquittal, alter or reverse the order.
 - c. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or through an advocate in his own defence. Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
 - d. Where the sentence dealt with under this section has been passed by a Subordinate Court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
 - e. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
 - f. When an appeal arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
10. The applicant avers that the life imprisonment sentence imposed on him was too harsh, considering that he is ailing and prays that the court should consider his condition and reduce his sentence.
11. I have had a chance to peruse the trial file and specifically the sentencing proceedings on 28th October 2014 where the court gave the maximum sentence for the offense as defilement of a minor aged 3 years which is life imprisonment.



12. It is this court's view that when considering to review the sentence it must take into consideration the following factors; firstly, the gravity of the offence and its prevalence; secondly, the facts and circumstances of the case and whether the applicant is repentant and genuinely remorseful for the unlawful act.
13. It is important to note that the sentence against the applicant was passed on 28th October 2014 before the courts interpreted the decision by the Supreme Court in *Francis Karioko Muruatetu & 5 others v Republic*, [2017] eKLR to mean that all mandatory sentences prescribed by the law including the *Sexual Offences Act* were unconstitutional to the extent that they deprived the trial court of its discretion to mete out an appropriate sentence against an offender after considering his or her plea in mitigation and the aggravating factors surrounding commission of the offence in question. Examples of cases where the Muruatetu decision was applied to sexual offences included the Court of Appeal decision in *Christopher Ochieng v Republic*, [2018] eKLR; *Evans Wanjala Wanyonyi v Republic*, [2019] eKLR; *Dismas Wafula Kilwake v Republic*, [2018] eKLR.
14. The learned trial magistrate apparently exercised her discretion in sentencing in accordance with the jurisprudence then prevailing that trial courts retained discretion to mete out appropriate sentences even in cases where the law prescribed mandatory sentences.
15. The Supreme Court has now changed the above position by clarifying in directions issued on 6th July 2021 in the second Muruatetu case. The court expressly stated that its decision in the first Muruatetu case applied only to the mandatory death sentence for the offence of murder prescribed under section 204 of the *Penal Code* and not to any other sentence.
16. The penalty of the offence of defilement under section 8(2) of the *sexual offences Act*, carries a life imprisonment sentence and I do find that the sentence proffered was appropriate considering that the age and gravity of the sentence.
17. For the above reasons, I find no merit in the application for revision of sentence imposed on the applicant, the sentence is lawful. The application dated 4th June, 2024 is declined and dismissed.
18. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 1ST DAY OF JULY, 2025.

S.N MBUNGI

JUDGE

In the presence of:

Court Assistant – Elizabeth Angong'a

