



**Gichia v Republic (Miscellaneous Criminal Application
E097 of 2024) [2025] KEHC 10137 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E097 OF 2024
FN MUCHEMI, J
JULY 10, 2025**

BETWEEN

JOHN MOSES GICHIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 9th December 2024 in which the applicant seeks to have his sentence reviewed on the grounds that he applicant has reformed for the period he has been in prison and wishes to be re-integrated in society.
2. The applicant was convicted by Gatundu Senior Principal Magistrate in Criminal Case No. 28 of 2016 of two counts of 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 on both counts. The applicant filed an appeal in Kiambu HCCRA No. 21 of 2019. The High Court upheld the conviction and set aside the life imprisonment sentences substituting them with twenty (20) years imprisonment in each count. The applicant states that he did not lodge a second appeal to the Court of Appeal.
3. The applicant thus prays that the court do review his sentence taking into consideration the period he has spent in custody as well as the current developments in jurisprudence and the Judiciary Sentencing Guidelines 2023.
4. The respondent filed grounds of opposition dated 28th May 2025 and argues that the offence the applicant was found guilty of is a felony which attracts a sentence of life imprisonment which is legal and constitutional. Further, recent decisions of the Supreme Court has held in several petitions that life imprisonment is legal and not in contravention of *the Constitution* in defilement cases.



5. Parties put in written submissions.

The Applicant's Submissions

6. The applicant submits that he has been in custody since his arrest on 26th October 2016 and has already served eight (8) years, one (1) month and two (2) weeks in prison. The applicant prays the court considers the length of time already served and assess whether a further period of incarceration is necessary. The applicant further submits that he has undertaken various rehabilitation programmes thus in compliance with the Sentencing Guidelines 2023.

The Respondent's Submissions.

7. The respondent reiterates the averments in her affidavit and submits that the instant application is an abuse of the court process and ought to be dismissed. To support her submissions the respondent relies on the Supreme Court decisions in Petition No. E002 of 2024 Republic vs Evans Nyamari Ayako and Petition No. E013 of 2024 Republic vs Julius Kitsao Manyeso.

The Law

8. 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.

9. In the case of Samuel Kamau Macharia vs 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.”

10. The applicant herein was convicted on two counts for the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 by the trial court in Gatundu SPM Criminal Case (SO) No. 28 of 2016 and sentenced to life imprisonment on each count. The sentence on the second count was held in abeyance considering the nature of the sentence. He appealed to the High Court against the entire judgment of the court in Kiambu Criminal Appeal No. 21 of 2019. The High Court upheld the conviction while the sentence of life imprisonment was commuted to twenty (20) years imprisonment on each count. The sentences were ordered to run concurrently. Whilst considering the appeal on sentence, the learned Judge relied on the Court of Appeal decisions in BW vs Republic KSM CA Criminal Appeal No. 313 of 2010 [2019] eKLR, Christopher Ochieng vs Republic KSM CA Criminal Appeal No. 202 of 2011 [2018] eKLR and Jared Koita Injiri vs Republic KSM CA Criminal Appeal No. 93 of 2014 whereby the Court of Appeal declared the mandatory minimum sentences under the *Sexual Offences Act* unconstitutional thus imposing definite sentences of imprisonment.

11. Article 50(2)(q) of *the Constitution* 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. Under Article 50 (2) (q) the applicant has only one option of appealing which he utilized before Kiambu High Court. He has no legal basis of approaching this court for review.
13. The applicant having filed an appeal that was heard and determined by the High Court Kiambu, a court with concurrent jurisdiction with this court, he has no basis in law of applying for review before this court. This is tantamount to asking this court to sit on appeal on the judgment of the Kiambu High Court which is against the law and structure and functions of courts
14. I find this application incompetent and misconceived and it is hereby struck out.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

