



**JWM v Republic (Miscellaneous Criminal Application
E099 of 2024) [2025] KEHC 9564 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E099 OF 2024**

FN MUCHEMI, J

JULY 3, 2025

BETWEEN

JWM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. This application for determination dated 24th December 2024 seeks for orders for review of sentence.
2. The applicant states that he was convicted by Thika Chief Magistrate in Criminal Case No. 874 of 2011 with the offence of incest contrary to Section 20(1) of the *Sexual Offences Act* and was sentenced to life imprisonment. The applicant appealed to the High Court in Murang'a in Criminal Appeal No. 423 of 2013 and the appeal was dismissed on 24th February 2014. The applicant subsequently filed an application for review of sentence in the High Court Kiambu in Criminal Revision No. 413 of 2018 but the court directed that he files an application for review of sentence before the trial court.
3. The applicant states that he was in remand custody from the date of arrest on 16th February 2011 and later in prison serving sentence. For those many years, the applicant says he has undergone various rehabilitation programs. The applicant thus seeks to have his sentence reviewed to a lenient sentence taking into account the time he has been in prison.
4. The respondent filed grounds of opposition and submissions dated 5th June 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 Murang'a High Court vide Appeal No. 423 of 2013 upheld the sentence of the trial court on 24th February 2014. 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



as well as determining whether the appeal has chances of success. Such an exercise shall not be in the mandate of this court.

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 in the High Court. 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.

The Law

6. 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.

7. 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.”

8. The applicant herein was convicted on two counts for the offence of incest by the court in Thika CM Criminal Case No. 874 of 2011 and sentenced to life imprisonment. He appealed to the High Court in Murang’a in Criminal Appeal No. 423 of 2013 and the appeal was dismissed on 24th February 2014. In upholding the sentence, the learned Judge stated that there was no basis for interfering with the sentence which the learned magistrate imposed upon the applicant.

9. Article 50(2)(q) of the *Constitution* is the relevant law for review. The article which 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.

10. It therefore follows that this Honourable court cannot review a decision of a court with concurrent or similar jurisdiction and reduce the sentence to a lesser sentence as requested by the applicant. Review can only be done by a court of higher jurisdiction. Therefore, the application is incompetent and ought to be struck out.

11. The provision of Article 50(2) (q) is very clear that the application only choose to apply for review in a higher Court or to Appeal. The applicant herein chose to appeal against the judgment of the Thika Magistrate in Thika Cr. Case No.874 of 2012. The High Court examined the totality of the evidence and the legality of the sentence. The court found no merit in the appeal and dismissed it. The applicant has now approached this court being an equal and concurrent jurisdiction with the Murang’a High Court. This court has no power to review the judgment of another judge for it would be sitting on appeal over the said judgment.

12. This application for review is a non-starter for the reasons that the appellant has exhausted his constitutional rights as a convicted person under Article 50(2) (q) and that this court lacks jurisdiction to review the High Court judgment.

13. I find this application misconceived and improperly before this court and strike it out accordingly.



14. It hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF JULY 2025.

F. MUCHEMI

JUDGE

