



**Kiplangat v Republic (Criminal Revision E003 of 2025)
[2025] KEHC 10098 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E003 OF 2025
FN MUCHEMI, J
JULY 10, 2025**

BETWEEN

PETER KIRUI KIPLANGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 8th January 2025 in which the applicant seeks to have his sentence reviewed under Section 333(2) of the *Criminal Procedure Code*.
2. The applicant states that he was convicted by Gatundu Chief Magistrate in Criminal Sexual Offence Case No. 19 of 2019 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve thirty (30) years imprisonment. The applicant filed an appeal Kiambu HCCRA No. 5 of 2023 but he says he withdrew it on 15th May 2024. No order of withdrawal of the appeal was filed by the applicant.
3. The applicant seeks for review of sentence relying on Section 333(2) of the *Criminal Procedure Code* urging the court to consider the period he served in remand pending the hearing and disposal of his case. The applicant states that he was arrested on 2nd August 2019 and sentenced on 15th April 2020.
4. In opposition to the application, the respondent filed Grounds of Opposition dated 28th May 2025 and states that the offence which the applicant was found guilty is a felony which attracts a sentence of life imprisonment which is legal and constitutional. Further the recent decisions of the Supreme Court have held 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 relies on Section 333(2) of the [Criminal Procedure Code](#) and the cases of [Vincent Iona Sila & 87 Others](#) Petition No. 15 of 2020 and [Ahamad Abolfathi Mohammed & Another v Republic](#) (2018) eKLR and submits that he was arrested on 2nd August 2019 and sentenced on 15th April 2020 and he had been in custody for that whole period. The applicant further submits that he is remorseful, rehabilitated and ready for re-integration. Additionally, the applicant prays that the court take into account the recent development of the law on sentencing and mete a lenient sentence in conformity with the [Sentencing Policy Guidelines](#) 2015.

The Respondent's Submissions.

7. 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

8. Section 333(2) of the [Criminal Procedure Code](#) provides:-

“Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this [Code](#).

Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

9. It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody. However, the trial magistrate did not take into consideration during sentencing the eighteen (18) months and eighteen days. This is the period from the date of arrest 2nd April 2019 to the date of sentencing being 15th April 2020. However, the issue is whether this court has a legal basis to consider the said period and reduce the sentence accordingly.
10. This court is aware of the recent Supreme Court decisions on SC Petition No. E013 of 2024 KESC (KLR) [Republic v Julius Manyeso](#) and Petition No. E002 of 2024 KESC 20 (KLR) of [Republic v Evans Nyamari](#) respondents in the said petitions had been sentenced by the trial courts on the offences of defilement for imprisonment for life, under Section 8 of the [Sexual Offences Act](#). During their second appeals in the Court of Appeal, the life sentences were quashed and substituted with definite sentences of imprisonment on ground that the trial court had the discretion to give terms of imprisonment under the [Sexual Offences Act](#) and that the minimum sentences under the [Sexual Offences Act](#) denied trial courts of their discretion in sentencing.
11. The Supreme Court overturned Court of Appeal findings on sentence, quashed the definite terms of imprisonment and reinstated the life imprisonment sentences on the basis that the sentences for defilement under Section 8 of the Act are lawful and ought to be imposed to the letter. These decisions have now developed jurisprudence which all the courts below the Supreme Court must abide as provided for by Article 163(7) of the [Constitution](#).
12. The applicant in this case ought to have been sentenced to life imprisonment as provided by Section 8(2) of the [Act](#) and not to twenty (20) years imprisonment. If this was an appeal, the prosecution ought to have applied for enhancement of sentence under Section 354 of the [Criminal Procedure Code](#).



However, this court is dealing with an application for review where enhancement of sentence is not applicable.

13. As such, reviewing sentence under Section 333(2) of the *Criminal Procedure Code* herein would amount to correcting a wrong with another wrong. In view of the recent jurisprudence of the Supreme Court speaks against any review of sentence under Section 8(2) of the *Sexual Offences Act*.
14. Consequently, in my considered view that Section 333(2) is not applicable in a sentence of life imprisonment or under Section 8 of the *Sexual Offences Act* or in any definite term of imprisonment thereof imposed under Section 8 which is not in compliance with the recent Supreme Court decisions cited herein.
15. I come to the conclusion that this application is misconceived and incompetent and must fail.
16. The application is hereby struck out.
17. It is hereby so ordered.

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

F. MUCHEMI

JULY

