



**Keli v Republic (Miscellaneous Criminal Application  
E094 of 2024) [2025] KEHC 9531 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9531 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E094 OF 2024**

**FN MUCHEMI, J**

**JULY 3, 2025**

**BETWEEN**

**JAMES WAITA KELI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application for determination is undated whereas the applicant seeks for orders to review of sentence on the grounds that he is a dangerous sexual offender pursuant to Section 39(1) of the [Sexual Offences Act](#) and ought to be released and undergo long time supervision of rehabilitative nature.
2. The applicant was convicted in Thika C M Criminal Case (S.O) No. 36 of 2016 with two counts of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) and was sentenced to life imprisonment on each count. The applicant appealed to the High Court in Kiambu in Criminal Appeal No. 53 of 2020 whereas the appeal was dismissed on conviction on 9<sup>th</sup> March 2021 However the life imprisonment sentence in both counts reviewed to twenty years.
3. The applicant states that he is due to be released from prison on 15/4/2030 which translates to over 5 years to come. The prison rules require that one placed under the long term supervision of rehabilitative nature contemplated in Section 39 of the [Sexual Offences Act](#).
4. The respondent filed grounds of opposition dated 26<sup>th</sup> 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 Kiambu High Court vide Appeal No. 53 of 2020 upheld the conviction as well as reducing the life sentence to twenty years imprisonment. 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 was dealt with conclusively by the High Court in Kiambu. The respondent further states that the time spent in custody was considered by the Kiambu High Court where the life imprisonment was quashed and substituted with the sentence of twenty years on each count and both sentences to run concurrently from the date of arraignment, that is 15<sup>th</sup> December 2016. The respondent argues that the sentence passed by both the trial court and the High Court was proper and legal as it considered the aggravating and mitigating circumstances and the jurisprudence at that time. Additionally, the Supreme Court has recently held that life imprisonment in defilement cases is constitutional and the applicant is lucky to have been sentenced before these recent developments.
6. The respondent further states that the applicant is just testing the waters and trying his lack thus forum shopping. Such actions should be discouraged by this court to deter other potential applicants with similar applications.
7. Parties put in written submissions.

### **The Applicant's Submissions.**

8. The applicant refers to Section 39 of the *Sexual Offences Act* and Paragraph 4.5.8 (i)(ii) of the Sentencing Guidelines Policy and urges the court to allow a convict to serve his remaining sentence of five years under the long-term supervision of rehabilitative nature. The applicant submits that he is a first offender, he is remorseful, he has a young family, he is rehabilitated and he became born again whilst in prison.

### **The Respondent's Submissions**

9. The respondent reiterates the contents of 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 on two counts for the offence of defilement by the trial court in Thika CM Criminal Case (SO) No. 36 of 2016 and sentenced to life imprisonment on each count



however the sentence on the second count was held in abeyance. He appealed to the High Court in Kiambu being Criminal Appeal No. 53 of 2020 and the appeal on conviction was dismissed on 9<sup>th</sup> March 2021 but the life sentence was quashed and substituted with a sentence of twenty (20) years imprisonment on each count. Both sentences were directed to run concurrently from the date of arraignment, 15<sup>th</sup> December 2016. Whilst revising the sentence the learned Judge referred to the Court of Appeal decisions in *BW v Republic KSM CA Criminal Appeal No. 313 of 2010 [2019] eKLR* and *Jared Koita Injiri v Republic KSM CA Criminal Appeal No. 93 of 2014* and took into consideration that the Court of Appeal had declared the mandatory minimum sentences under the *Sexual Offences Act* unconstitutional and in similar cases had reduced the life sentence.

14. Article 50(2)(q) of *the Constitution* allows convicted person either appeal or apply for review to a higher court. The applicant has exhausted his right under the said constitutional provision in his appeal in Kiambu HCCRA No. 53 of 2020. His sentence was reviewed from life imprisonment to twenty (20) years imprisonment. Coming to this court for review is not supported by *the Constitution* and the statute. It amounts to an abuse of the due process of the court. Review can only be done by a court of higher jurisdiction. This court has concurrent jurisdiction with the High Court in Kiambu which determined the applicant's appeal and has no power to review the judgment in Kiambu HCCRA No. 53 of 2020..
15. I find this Application misconceived and incompetent and hereby struck out.
16. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

