



**Ng'ang'a v Republic (Miscellaneous Criminal Application
E076 of 2024) [2025] KEHC 11088 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E076 OF 2024**

FN MUCHEMI, J

JULY 24, 2025

BETWEEN

MOSES NDUNGU NG'ANG'A APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 3rd September 2024 in which the applicant seeks to have his sentence reviewed.
2. The applicant said he was convicted by Gatundu Chief Magistrate, in Criminal Case No. 1512 of 2007 with the offence of defilement contrary to Section 8(1) as read with (2) of the *Sexual Offences Act* and was sentenced to life imprisonment on 3rd September 2007. The applicant appealed on to the High Court in Murang'a but he has never been served with an appeal number or hearing date.
3. The applicant states that his file got burnt at Gatundu Law Courts in the year 2007 in a fire that broke out in the premises. The applicant further prays that the court takes into account the period he spent in remand since his date of arrest in the year 2007 pursuant to Section 333(2) of the *Criminal Procedure Code*.
4. The respondent opposes the application and states that the applicant was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* at Gatundu Chief Magistrate's Court vide Criminal Case No. 1512 of 2007 and after his trial he was found guilty and sentenced to life imprisonment which is constitutional and legal. The respondent refers to the recent Supreme Court decisions of Petition No. E002 of 2024 *Republic v Evans Nyamari Ayako* and Petition No. E013 of 2024 *Republic v Julius Kitsao Manyeso* and states that life imprisonment is legal and not in contravention of the *Constitution* in defilement cases under the *Sexual Offences Act*.



The Law.

5. 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.

6. The applicant herein was convicted in the Gatundu Chief Magistrate Court in Criminal Case No. 1512 of 2007 with the offence of defilement contrary to Section 8(1) as read with (2) of the [Sexual Offences Act](#). The applicant was sentenced to life imprisonment on 3rd September 2007. A fire broke out in Gatundu Law Courts in the year 2007 and the applicant's file was among those that got burnt in the fire. Thus, the court is not in a position to know the mitigation by the applicant or the time spent in custody.
7. That notwithstanding the offence of defilement as provided in Section 8(1) as read with 8(2) of the [Sexual Offences Act](#) carries a penalty of life imprisonment. Thereby, the trial court by imposing a sentence of life was within the law. Furthermore, the recent Supreme Court decisions of Petition No. E002 of 2024 [Republic v Evans Nyamari Ayako](#) and Petition No. E013 of 2024 [Republic v Julius Kitsao Manyeso](#) provide that life imprisonment is legal and not in contravention of the [Constitution](#) in defilement cases under the [Sexual Offences Act](#).
8. As such, the lawful sentence for defilement is in accordance with section 8 of the [Sexual Offences Act](#). There is, therefore, no room for review of sentence under Section 8(1) and 8(2) of the [Sexual Offences Act](#).
9. I find the application misconceived and dismiss it accordingly.
10. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

