



**Njoroge v Republic (Miscellaneous Criminal Application  
E098 of 2024) [2025] KEHC 10107 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E098 OF 2024**

**FN MUCHEMI, J**

**JULY 10, 2025**

**BETWEEN**

**JOSEPH KAMAU NJOROGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application for determination is dated 21<sup>st</sup> March 2024 seeks for orders of review of sentence.
2. The applicant states that he was convicted by Gatundu Chief Magistrate, in Criminal Case (SO) No. 7 of 2017 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the [Sexual Offences Act](#) and was sentenced to twenty (20) years imprisonment. The applicant appealed to High Court Kiambu Criminal Appeal No. 34 of 2020 whereas the appeal was dismissed on 9<sup>th</sup> November 2020. The applicant subsequently fled a second appeal in the High Court Kiambu Criminal Appeal No. 73 of 2021 which was later transferred to this court and given a new number as Thika HC Criminal appeal No. 53 of 2023. As the court set out to hear the appeal, it came across a judgment of the Kiambu HCCRA No. 73 of 2021 of judge Esther Maina delivered on 28<sup>th</sup> October 2020. This court then struck out the second appeal Thika HCCRA No. E53 of 2023.
3. The respondent filed grounds of opposition and submissions dated 27<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. 34 of 2020 upheld the sentence of the trial court. 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.
4. 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.**

5. Having given the background facts of this application, it is noted that the conduct of the applicant is unacceptable as he has a habit of filing numerous appeals and applications yet he is aware that the Constitution of Kenya Article 50(2) outlaws a convict appealing and applying for review in regard to the same conviction and sentence.
6. Article 50(2)(q) of the Constitution is of relevance and 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.
7. The application before the court offends the provisions of Article 50(2) of the Constitution as explained herein. There is a principle that litigation must come to an end. Similarly, criminal cases must be concluded. Convicts must be discouraged at all costs from jumping from court to another through multiple appeals and applications. The applicant herein has wasted a lot of judicial time in his never-ending endeavours to benefit from lesser sentences or to be acquitted. This court strongly condemns the unbecoming conduct of the applicant herein.
8. Consequently, I find this application a waste of judicial time. It is misconceived and incompetent and is hereby dismissed.
9. It is hereby struck out.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI  
JUDGE**

