



**Ndungu v Republic (Criminal Revision E112 of 2024)  
[2025] KEHC 9519 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E112 OF 2024  
FN MUCHEMI, J  
JULY 3, 2025**

**BETWEEN**

**PAUL MAINA NDUNGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief Facts**

1. This application for determination is undated whereas the applicant seeks for orders of review of sentence under Section 333(2) of the Criminal Procedure Code to the effect that the period he spent in custody pending trial be taken into consideration.
2. The applicant states that he was convicted by in Gatundu C M Criminal (Sexual Offence) Case No. 35 of 2017 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 on 14<sup>th</sup> April 2019 to serve fourteen (14) years imprisonment. The applicant states that he filed an appeal in High Court in Kiambu but he did not follow it up. As such, he assumes his appeal remained unattended to.
3. The applicant herein seeks for review of sentence urging this court to invoke section 333(2) of the Criminal Procedure Code and consider the period he served in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 11<sup>th</sup> December 2017 and sentenced on 14<sup>th</sup> April 2019 This was a period of one (1) 1 year and eight 8 months that the trial magistrate failed to consider during sentencing. The applicant further states that he is remorseful, a first offender and is rehabilitated.
4. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 26<sup>th</sup> May 2025 and states that in the recent decisions of the Supreme Court on defilement cases the court held that life imprisonment is the legal sentence and not in contravention of the Constitution



and statute law. The respondent states that all pertinent issues of sentence were fully canvassed and considered by the trial court and was given a very lenient sentence of 14 years imprisonment instead of life imprisonment as the complainant was below 11 years of age.

5. The respondent argues that the sentence passed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances.
6. The respondent states that the applicant is just testing the waters and trying his luck thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.

### **The Law**

7. 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.

8. The above provision prohibits review where a convict has gone through the appeal process. In the instant matter the applicant says he filed an appeal but has not availed any record to that effect. He did not give any reason for following up this appeal.

9. 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.”

10. It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.
11. It is important to note that if this court was hearing an appeal, the right thing to do would have been to enhance the sentence imposed by the trial court. Now that this is an application for review, the court will not interfere with the sentence. However, the recent Supreme Court Petitions of Republic vs Julius Kitsao Manyeso Petition No. E013 of 2024 KESC (KLR) and that of Republic vs Evans Nyamari Ayao Petition No. E002 of 2024 KESC 20 (KLR) the supreme Court overturned sentences reviewed by Superior Courts from life imprisonment to certain terms of imprisonment thus reinstating life imprisonment sentence. The court declared the cases as improper and held that sentences in defilement cases shall be in accordance with Section 8 of the Sexual Offences Act.
12. In view of the said Supreme Court decisions I hereby find that this court cannot review the sentence imposed by the trial court under Section 333(2) of the Criminal Procedure Code or in any other manner. The sentence the accused is serving now is contrary to the recent jurisprudence of the lower court. Unfortunately, this sentence can only be corrected on an appeal.
13. I find this Application misconceived, incompetent and an abuse of the court process and hereby strike it out accordingly.
14. 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**

