



REPUBLIC OF KENYA



KENYA LAW
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**Ndunda v Republic (Criminal Revision E050 of 2025)
[2025] KEHC 9467 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E050 OF 2025
AN ONGERI, J
JULY 2, 2025**

BETWEEN

MUTHAMA WAMBUA NDUNDA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant in this Criminal Revision application Muthama Wambua Ndunda was charged with the offence of rape contrary to Section 3(1)(a)(b)(3) of the *Sexual Offences Act* (SOA) No. 3 of 2006.
2. He was convicted on his own plea of guilty and he was sentenced to life imprisonment.
3. The Applicant appealed against the sentence and the appeal was dismissed on 24th January 2025 by this court.
4. The Applicant has now filed this review application seeking review of the sentence also to have the period spent in custody taken into consideration.
5. I find that this court has no jurisdiction to entertain this application.
6. The Applicant can only prefer a second appeal to the Court of Appeal.
7. The Applicant, Muthama Wambua Ndunda, having been convicted of rape under Section 3(1)(a)(b)(3) of the *Sexual Offences Act* and sentenced to life imprisonment, and having exhausted his first appeal which was dismissed by this court, now seeks a review of his sentence.
8. However, this court lacks jurisdiction to entertain a second challenge to the sentence under the guise of a review application.



9. The proper avenue for the Applicant, having been aggrieved by the dismissal of his first appeal, is to file a second appeal before the Court of Appeal as provided under Section 361 of the *Criminal Procedure Code* (Cap. 75).
10. The legal framework is clear on the hierarchy of appeals in criminal matters. A party dissatisfied with the decision of the High Court in its appellate jurisdiction may only pursue further redress before the Court of Appeal, not through a review application before the same court.
11. This position was affirmed in *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, where the Court of Appeal emphasized that once the High Court has determined an appeal, its jurisdiction is exhausted, and any further challenge must be lodged in the higher court.
12. Similarly, in *Peter Ngure Mwangi v Republic* [2014] eKLR, the court held that a litigant cannot circumvent the appellate process by seeking a review of a sentence already upheld on appeal.
13. Regarding the Applicant's request to have the period spent in custody considered, the applicant was sentenced to life imprisonment and the period he spent in custody cannot be deducted in the circumstances.
14. Consequently, this application is dismissed for lack of jurisdiction. The Applicant is at liberty to pursue his remedies before the Court of Appeal if he so wishes.
15. This application is accordingly dismissed.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Applicant

