



REPUBLIC OF KENYA



**Syanda v Republic (Criminal Miscellaneous Application
E001 of 2025) [2025] KEHC 9847 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CRIMINAL MISCELLANEOUS APPLICATION E001 OF 2025**

LW GITARI, J

JULY 3, 2025

BETWEEN

JOHN KYALO SYANDA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a Notice of Motion seeking orders that:
 1. He is seeking clemency on the following reasons
 2. Heath status
 3. The already served period as enough punishment subject to the best discretion of this court.
 4. Not offender prison discipline.
2. The notice of motion is supported by the affidavit of the applicant. He avers that he was convicted and sentenced to serve fifteen (15) years imprisonment on 22/5/2022 by Justice Limo. That in line with Article 165 he has filed this application.
3. The applicant submits that he was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(5) of the *Sexual Offences Act* and sentenced to serve fifteen years imprisonment. He appealed to this court but the appeal was not successful. It was dismissed. The sentence was however, reduced by five months to factor in the time spent in custody awaiting trial in line with Section 333(2) of the *Criminal Procedure Code* (Cap 75 Laws of Kenya).
4. The applicant is seeking review of the sentence under Article 165 of *the Constitution* of Kenya. The respondent thro' Mr. Ochieng, ADPP opposed the application and stated that the application is not properly before the sentence he seeks to review was meted out by the High Court which is a court of



concurrent jurisdiction with this court. That Article 165 of the Constitution does not give this court jurisdiction to review a sentence passed by the High Court. It is also submitted that the matters raised in the affidavit are mitigations which were considered by the trial court when passing sentence.

Determination

5. The accused seeks review of the sentence. Article 165(6) of the Constitution provides:

“The High Court has supervisory jurisdiction over the sub-ordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court.”

6. Courts jurisdiction is granted by the Constitution or the statute. The above provision of the Constitution does not give the High Court jurisdiction to entertain application for review of its own decision. The sentence the applicant is challenging or is seeking to review was passed by the High Court while exercising its appellate jurisdiction over the sub-ordinate court. The next proper forum for the applicant to Appeal is the court to Appeal as provided under Article 164(3)(a) of the Constitution which provides that:

“The court of Appeal has jurisdiction to hear Appeals from –

a. The High Court”

7. It follows that the present application is not properly before this court. I therefore dismiss the application for want of jurisdiction.

DATED, SIGNED AND DELIVERED AT KITUI THIS 3RD DAY OF JULY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

