Wanjala v Republic (Criminal Revision E124 of 2024)
[2025] KEHC 9504 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9504 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CRIMINAL REVISION E124 OF 2024

FN MUCHEMI, J

JULY 3, 2025

BETWEEN

DOUGLAS WEPUKULU WANJALA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The application for determination is dated 17th April 2024 seeks for orders of review of sentence on grounds that the applicant has reformed for the period he has been in prison and wishes to be re-integrated in society.

2. The applicant was convicted by Thika Chief Magistrate, in Criminal Case No. 3258 of 2015 with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* and was sentenced to serve fifteen (15) years imprisonment. The applicant appealed to the High Court in Kiambu in Criminal Appeal No. 30 of 2020 and the said appeal was dismissed on 9th November 2020.

3. The applicant states that he was arrested on 29th June 2015 and has spent nine (9) years in prison and therefore seeks to have that time he spent in prison to be deemed enough. He further states that he has undergone various rehabilitation programmes and prays that the court grant him a non custodial sentence for the remainder of his sentence.

4. The respondent filed grounds of opposition and submissions dated 26th May 2025 and states that the applicant was charged with the offence of defilement contrary to Section 8(1) as read with 8(4) of the *Sexual Offences Act* and after the trial he was found guilty and sentenced to fifteen years imprisonment. The respondent argues that the applicant has not argued or suggested that the sentence passed is manifestly harsh and excessive, that the sentence passed was illegal or improper or that the trial court acted on wrong principles or omitted relevant factors or took into account irrelevant factors in sentencing or that the proceedings were irregular or in violation of his right or fundamental freedom.

The applicant only made generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warranting upsetting the sentence imposed by the trial court.

5. The respondent states that both mitigating and aggravating circumstances were considered but the aggravating circumstances outweighed the mitigating circumstances hence the sentence by the trial court.

6. The respondent states that the sentence passed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances. Further, the offence which the applicant was found guilty is a felony which attracts a prison sentence of a term which should not be less than fifteen years.

The Law

7. 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.

8. The applicant has come to this Honourable court by way of review provided for under Article 50 (2) (q)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.

9. In the case of *Samuel Kamau Macharia vs KCB & 2 Others*, Civil Application No. 2 of 2011, it was stated:-

   > " A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law."

10. The applicant herein was convicted of the offence of defilement by the trial court in Thika CM Criminal Case No. 3258 of 2015 and sentenced to serve 15 years imprisonment. He appealed to the High Court in Kiambu in Criminal Appeal No. 30 of 2020 which appeal was dismissed on 9th November 2020. In upholding the sentence, the High Court took into consideration that the sentence was just in the circumstances despite the fact that it was the minimum sentence and hence mandatory and further that mandatory sentences have been declared unconstitutional. This was the jurisprudence of superior courts at that time.

11. Article 50(2)(q) of *the Constitution* is of relevance herein. The applicant after conviction had two options: to appeal or to apply for review in a higher court. He chose to appeal and cannot have a second bite of cherry under Article 50(2) (q). He has exhausted his constitutional rights. Litigation must come to an end and this is the purpose served by provisions of *the Constitution* and statute law.

12. It is important to state that this court and the Kiambu High Court are courts of concurrent jurisdiction and none can review the orders of another. The Kiambu court dealt with both conviction and sentence and found no merit in the appeal thus dismissing it. The applicant had the option of filing a second appeal in the Court of Appeal but he chose not to.

13. It is noted that this application is pleading for mercy of this court to consider the applicant has reformed for the period he has been in prison. Under Article 133 of *the Constitution* the power of mercy over

convicted persons is granted to the President as prerogative to be exercised the power of Mercy Advisory Committee.

14. Consequently, I find this application misconceived and incompetent and I hereby strike it out.

15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF JULY 2025.

F. MUCHEMI.

JUDGE