



REPUBLIC OF KENYA



KENYA LAW
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**Itumange v Republic (Criminal Revision E230 of 2024)
[2025] KEHC 12689 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E230 OF 2024
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

JULIUS MALUKU ITUMANGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 5th December 2024 seeks for orders of review of sentence.
2. The applicant said he was convicted by Thika Chief Magistrate in Criminal (SO) Case No. 19 of 2017 with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and was sentenced to life imprisonment. The applicant appealed to the High Court in Kiambu Criminal Appeal No. 15 of 2019 and the appeal was dismissed. However, the High Court reviewed the sentence from life imprisonment to twenty (20) years imprisonment.
3. The applicant states that he has gone through rehabilitation programmes and he is a reformed person. The applicant further states that the trial court did not consider the time he spent in remand pursuant to Section 333(2) of the *Criminal Procedure Code*.
4. The respondent opposes the application vide Grounds of Opposition dated 5th June 2025 and states that the applicant was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* in Gatundu Chief Magistrate Court Criminal Case No. 19 of 2017 and was sentenced to life imprisonment. Being dissatisfied, he appealed to the High Court in Kiambu vide Criminal Appeal No. 15 of 2019 where the appeal on conviction was dismissed and the sentence of life imprisonment was substituted to twenty (20) years on 24th June 2021, which is lenient.



5. The respondent states that the current court has become functus officio and has no jurisdiction to resentence since a court of concurrent jurisdiction, Kiambu High Court dismissed the applicant's appeal and reduced his sentence to twenty years. Thus, for this court to entertain resentencing is equivalent to asking the court to sit as an appellate court against its own judgment. The respondent further states that the issue of sentence has been dealt with conclusively by the High Court in Kiambu. Furthermore, recent decisions of the Supreme Court have held that life imprisonment is legal and not in contravention of the [constitution](#) in defilement cases, thus the applicant is lucky that his sentence was reduced to twenty years.
6. Parties put in written submissions.

The Applicant's Submissions

7. The applicant submits that the High Court in Kiambu in Criminal Appeal No. 15 of 2019 reduced his sentence to twenty years and ordered the same to run from the date of conviction without accounting for the period he spent during trial. To support his contentions, the applicant relies on the decision in [Jona & 87 Others v Kenya Prison Service & 2 Others](#) (Petition No. 15 of 2020). The applicant submits that his sentence is harsh and excessive considering his advanced age, illness and other mitigating factors.
8. The applicant submits that he is a first offender, remorseful and he has undergone various rehabilitative programmes. The applicant further relies on the case of [Ali Abdalla Mwanza v Republic](#) [2018] eKLR and submits that he is 68 years old and is sickly suffering from hypertension, haemorrhoid and chronic peptic ulcers thus he implores the court to review his sentence downwards to enable him access medical care.

The Respondent's Submissions.

9. The respondent reiterates what she deposed in her affidavit and states that the recent decisions of the Supreme Court have held that life imprisonment is legal and not in contravention of the [constitution](#) in defilement cases. To support her contentions, the respondent relies on the decisions in Petition No. E002 of 2024 [Republic v Evans Nyamari Ayako](#) and Petition No. E013 of 2024 [Republic v Julius Kitsao Manyeso](#).

The Law

10. 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.
11. The applicant herein states that he was convicted by the Chief Magistrate Court in Gatundu in Criminal (SO) Case No. 19 of 2017 of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#). He was sentenced to life imprisonment and being aggrieved by the conviction and sentence appealed to the High Court in Kiambu Criminal Appeal No. 15 of 2019. The court heard the appeal. The conviction was upheld and the sentence of life imprisonment substituted with twenty years imprisonment to commence from 6th February 2019.
12. It therefore follows that this Honourable court cannot review a decision of a court of similar or concurrent jurisdiction and reduce the sentence to a lesser sentence. Review can only be done by a court of higher jurisdiction.



13. Furthermore, it is imperative to look at the relevant law in regard to this application. Article 50(2)(q) of the constitution is of relevance which 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.
14. Article 50(2)(q) of the constitution gives a convicted person two options and only one is available. The convicted person can choose to appeal against the judgment or apply for a review in a higher court. The applicant herein having filed an appeal has no legal basis of approaching this court for a review under Article 50(2) (q). It is therefore, evident that this court has no power to review the judgment of the High Court Kiambu which upheld the conviction and reviewed sentence in favour of the applicant.
15. It is also important to note that recent decisions of the Supreme Court have outlawed review of sentences in defilement cases. The court in the Petition of Republic v Julius Manyeso Petition No. E13 of 2024 held that the only sentence in defilement is that provided under Section 8 of the Sexual Offences Act. As such, the applicant was given a very lenient sentence by the High Court of twenty (20) years imprisonment. In an appeal court, such sentence would be enhanced.
16. The appellant says that for the time he has been in prison, he has reformed but has not cited the law he relies on to seek review on those reasons.
17. I find this application misconceived and I hereby strike it out.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 9th DAY OF SEPTEMBER 2025.

**F. MUCHEMI
JUDGE**

