



REPUBLIC OF KENYA



KENYA LAW
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**Muchuma v Republic (Criminal Revision E007 of 2025)
[2025] KEHC 12678 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E007 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025**

BETWEEN

PAUL WAFULA MUCHUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination is undated whereas the applicant seeks to have his sentence reviewed.
2. The applicant states that he was convicted by Ruiru Senior Principal Magistrate, in Criminal (SO) Case No. E006 of 2022 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve twenty (20) years imprisonment. The applicant further states that he appealed to the High Court Thika Criminal Appeal No. 21 of 2023 and the appeal on conviction was dismissed. In regard to sentence, the court reviewed it downwards from twenty years imprisonment to twelve (12) years.
3. The applicant states that he seeks the sentence to be reviewed further down for the benefit of his children.
4. The respondent opposes the application vide Grounds of Opposition and submissions dated 5th June 2025 and states that the applicant already exhausted his options by appealing the decision of the trial court and thus he cannot file the instant application for review.
5. The respondent further states that the offence the applicant was found guilty is a felony which attracts a sentence of twenty years which is legal and constitutional. Furthermore, recent decisions of the Supreme Court have held that sentences of defilement cases in the *Sexual Offences Act* are legal and not in contravention of the *Constitution*.



The Law

6. 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.”

7. The applicant herein was convicted in Senior Principal Magistrate Court in Ruiru in Criminal (SO) Case No. E006 of 2022 of the offence of defilement contrary to Section 8(1) as read with 8(3) of the Sexual Offences Act No. 3 of 2006. The applicant was sentenced to twenty years imprisonment and being aggrieved by the conviction and sentence appealed to the High Court Thika Criminal Appeal No. 21 of 2023. The court heard the appeal and dismissed the same but substituted the sentence of twenty years with twelve years on 16th May 2024.

8. It therefore follows that this Honourable court cannot review its own decision and reduce the sentence to a lesser sentence as requested by the applicant. The law provides that review can only be done by a court of higher jurisdiction.

9. 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.

10. Article 50(2)(q) of the Constitution gives a convicted person two options and only one is available at any given time. A 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 exhausted his rights of review under Article 50(2) (q). As such he has no other remedy both under the Constitution or under statute law.

11. I find that this application is misconceived and incompetent. It is hereby struck out.

12. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER, 2025

F. MUCHEMI

JUDGE

