



**Maina v Republic (Miscellaneous Criminal Application E007 of 2025)
[2025] KEHC 12612 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2025
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

DANIEL GITAU MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 20th January 2025 seeks for orders of review of sentence under Section 333(2) of the Criminal Procedure Code.
2. The applicant states was convicted by Thika Chief Magistrate, in Criminal Case No. 1001 of 2014 of 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 lodged an appeal at the High Court in Kiambu Criminal Appeal No. 41 of 2018 which was dismissed on 20th December 2018. The applicant filed a second appeal in the Court of Appeal in Nairobi and it was dismissed on 12th May 2023.
3. The applicant herein seeks for review of sentence and urges this court to invoke section 333(2) of the Criminal Procedure Code and consider the period he served in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 8th March 2014 and sentenced on 9th October 2017 which is about three (3) years. He states that the trial magistrate failed to consider the said period during sentencing.
4. In opposition to the application, the respondent filed Grounds of Opposition dated 4th June 2025 and states that recent decisions of the Supreme Court on defilement cases have held that life imprisonment is legal and not in contravention of the *constitution*. The respondent states that the applicant already



exhausted his appeal options and thus he cannot come back again for revision of his sentence before the High Court to seek for a remedy.

5. The respondent states that the applicant is just testing the waters or just forum shopping which actions should be discouraged by courts to deter other potential applicants with similar applications.
6. Parties put in written submissions.

The Applicant's Submissions.

7. The applicant relies on Section 333(2) of the Criminal Procedure Code and the cases of Bethwell Wilson Kibor vs Republic (2009) eKLR and Vincent Sila Jona & 87 Others vs Kenya Prisons Service & 2 Others (2021) eKLR and submits that the trial magistrate did not factor in the period of 11 months and 6 days he spent in custody prior to his conviction.

The Respondent's Submissions.

8. The respondent reiterates the contents of their affidavit in the submissions.

The Law

9. 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.

10. 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.

11. 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.”

12. The applicant herein was convicted of the offence of defilement by the trial court in Thika CM Criminal Case No. 1001 of 2014 and sentenced to serve 20 years imprisonment. He appealed to the High Court in Kiambu in Criminal Appeal No. 41 of 2018 which appeal was dismissed on 20th December 2018. The applicant then filed a second appeal in the Court of Appeal Nairobi Criminal Appeal No. 55 of 2020 which was dismissed on 12th May 2023 thereby upholding the conviction and sentence.

13. 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 until the Court of 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 that limit the number of times a litigant can approach the court.



14. It is important to state that the applicant having lodged an appeal at the Court of Appeal, he cannot apply a reverse gear to restart the litigation process afresh. Such a move is contrary to the law. It must be born in mind that the two appeal courts addressed the issues of conviction and sentence and this court has no power to address the issue of review as sought in this application.
15. I find this application misconceived and incompetent and it is hereby struck out.
16. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

