



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Republic (Criminal Revision E010 of 2025)
[2025] KEHC 12692 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12692 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E010 OF 2025
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

ELIJAH GATHERU NGUGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 4th December 2024 in which the applicant seeks to have his sentence reviewed under Section 333(2) of the *Criminal Procedure Code*.
2. The applicant states that he was convicted by Ruiru Senior Principal Magistrate, in Criminal Sexual Offence Case No. 7 of 2019 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve fifteen (15) years imprisonment.
3. The applicant herein seeks for review of sentence and urges the 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 26th July 2019 and sentenced on 6th May 2020 which amounts to 9 months and 10 days that the trial magistrate failed to consider during sentencing. The applicant further states that he is remorseful, a first offender and is rehabilitated.
4. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 5th June 2025 and states that recent decisions of the Supreme Court; Petition No. E002 of 2024 *Republic vs Evans Nyamari Ayako* and Petition No. E013 of 2024 *Republic vs Julius Kitsao Manyeso* on defilement cases have held that life imprisonment is legal and not in contravention of the *Constitution*. The respondent states that the applicant has not revealed whether or not he appealed as his judgment was passed on 6th May 2020.



5. The respondent states that the applicant is just testing the waters and trying his luck thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.

The Law

6. The applicant has come to this Honourable court by way of review provided for under Article 50 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.
7. The above provision prohibits review where a convict has gone through the appeal process. In the instant matter the applicant has not appealed the decision of the trial court and thus the application for review is proper before the court.
8. Section 333(2) of the Criminal Procedure Code provides:-

“Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
9. It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.
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. From the record, there is no indication that the magistrate took into consideration the period spent in custody. However, recent Supreme Court decisions have held that the sentence for the offence of defilement is the one provided under Section 8(1) and 8(2) of the Sexual Offences Act. In the Petition R vs Julius Manyeso the Supreme Court set aside the sentence of 40 years imprisonment reviewed by the Court of Appeal on 2nd appeal and substituted it with life imprisonment on grounds that Section 8 of the Act forms the basis of sentencing convicts in cases of defilement.
12. This court is bound by decisions of the Supreme Court under Article 163(7) of the Constitution.
13. As such I find this application misconceived and incompetent. It is hereby struck out.
14. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

