



**Okwama v Republic (Miscellaneous Criminal Application E028 of 2024)  
[2025] KEHC 12647 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12647 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E028 OF 2024  
FN MUCHEMI, J  
SEPTEMBER 10, 2025**

**BETWEEN**

**PETER ODHIAMBO OKWAMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application for determination dated 5<sup>th</sup> April 2024 which the applicant seeks for orders of review of sentence on grounds that he has undergone rehabilitation programmes in prison.
2. The applicant states that he was convicted by Thika Chief Magistrate, in Criminal Case No. 5313 of 2011 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 life imprisonment. The applicant lodged an appeal at the High Court in Nairobi Criminal Appeal No. 197 of 2012 which was dismissed on 19<sup>th</sup> March 2015. The applicant filed a second appeal in the Court of Appeal in Nairobi Criminal Appeal No. 50 of 2021 which was dismissed.
3. The applicant herein seeks for review on sentencing to a lesser sentence other than that of life imprisonment.
4. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 12<sup>th</sup> July 2025 and argues that the applicant has already exhausted his appeal options and thus he cannot come back to court for revision of his sentence. The respondent submits that the applicant having exhausted the appeal system up to the Court of Appeal, he has no legal basis to approach this court for review. Furthermore, the issue of sentence was dealt with and concluded in both the High Court and the Court of Appeal.



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

### **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 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.

8. In the case of Samuel Kamau Macharia v 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.”

9. The applicant herein was convicted of the offence of defilement contrary to Section 8 (1) and 8 (2) of the *Sexual Offences Act* in Thika CM Criminal Case No. 5313 of 2011 and sentenced to life imprisonment. He appealed to the High Court, Nairobi Criminal Appeal No. 197 of 2012 which was dismissed on 19<sup>th</sup> March 2015. The applicant then filed a second appeal in the Court of Appeal Nairobi Criminal Appeal No.50 of 2021 which was similarly dismissed on 26<sup>th</sup> May 2023. The two appeal courts upheld both the conviction and sentence. This is noted in the judgments of the two appeal courts.

10. The provisions of 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 all the way to the Court of Appeal. As such, he cannot have a second bite of his cherry under Article 50(2) (q). It goes without saying that the applicant 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. By filing this application, the applicant is wasting precious judicial time and is acting contrary to the law.

11. It is important to state that the applicant having lodged an appeal at the Court of Appeal, cannot come back to this court to seek resentencing as this court cannot review the orders of the Court of Appeal which is higher in hierarchy.

12. The Supreme Court has held in recent decisions like Republic v Julius Manyeso Petition No. E013 of 2024 that the only sentence that ought to be imposed on a convict of the offence of defilement is the one provided under Section 8 of the *Sexual Offences Act*, which is life imprisonment. In the current jurisprudence, there exits no room to impose a sentence different to life imprisonment.



13. Consequently, I find this application misconceived and incompetent and I hereby strike it out with no orders as to costs.

14. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10<sup>th</sup> DAY OF SEPTEMBER 2025,**

**F. MUCHEMI**

**JUDGE**

