



REPUBLIC OF KENYA



KENYA LAW
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**Mukhomba v ODPP (Criminal Revision E050 of 2021)
[2023] KEHC 20078 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E050 OF 2021**

PJO OTIENO, J

JULY 7, 2023

BETWEEN

VINCENT MUKOTSI MUKHOMBA APPLICANT

AND

ODPP RESPONDENT

(Application was heard and determined by Musyoka, J. and dismissed on the November 12, 2021)

RULING

1. The application filed in Court on August 9, 2021 and the Affidavit sworn in support thereof show that the decision sought to be challenged by revision was challenged in the High Court in Criminal Appeal No 3 of 2015 and in Court of Appeal in Criminal Appeal No 242 of 2011. Both were dismissed for want of merits. After the two Appeals were determined, the Applicant approached the High Court, again in Kakamega High Court Criminal Revision No 8 of 2020, seeking review of sentence. That application was heard and determined by Musyoka, J. and dismissed on the November 12, 2021.
2. In dismissing the matter the Judge rendered himself as follows:-

“...The offence, the subject of the instant proceedings, is not murder, but defilement, as defined in section 8(1)(3) of the *Sexual Offences Act*, the decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, does not apply to it. As a consequence, the High Court has no jurisdiction to review the sentence that was imposed by the trial court, based on the decision in *Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] (Koome CJ & P, Mwilu DCJ & VP, Ibrahim, Wanjala, Ndung’u & Lenala SCJJ). In any case, the issues raised with regard to sentence could and should have been raised within the appeals for consideration by the appellate courts. Since



there is no jurisdiction on my part to entertain the application, I shall strike it out, for it is incompetent. The said file shall be closed...”

3. Neither the facts nor law has changed since the Ruling by Musyoka J to give to this Court the jurisdiction to entertain the current application. The application is thus struck out on account of lack of jurisdiction.
4. Let the Court file be closed and this decision disseminated to the prosecution and the Applicant.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF JULY 2023.

PATRICK J. O. OTIENO

JUDGE

