

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. 265 OF 2017 & HCCRA NO.40 OF 2018

JACKSON MWANZIA MUSEMBI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This ruling is in respect to **Makueni High Court Criminal Appeal Nos 265/2017 and 40/2018** where the Appellant is Jackson Mwanzia Musembi while the Respondent is the Republic of Kenya. The files have been placed before me by the Deputy Registrar for some directions. The said appeals originate from Makindu SPM's Cr. Case No. 237 of 2012.

2. The **"Appellant"** was charged and convicted of the offence of defilement contrary to Section 8(1) and (2) of the Sexual Offences Act by Hon. P. Wambugu Resident Magistrate on 10th May, 2013 and sentenced to life imprisonment. He filed Machakos High Court Criminal Appeal No. 99 of 2013 which was dismissed on 16th September, 2014 by Justice L. Mutende. He moved to the court of Appeal Nairobi vide Criminal Appeal No. 42 of 2016. The same was heard and dismissed on 10th February, 2017.

3. Aware of all this, he filed some papers at Makueni Law Courts by way of Chamber Summons in 2017 and 2018 seeking to have a retrial ordered. There was no petition attached to the said application.

The registry at Makueni Law Courts proceeded to register the same and opened Makueni HCRA Nos 265/2017 and 40/2018. Infact HCRA No. 40/2018 was admitted for hearing by Kariuki – Judge on 19th October, 2018.

4. There is no way the said **Jackson Mwanzia Musembi** could file an appeal before the High Court when the court of Appeal had already heard and determined the matter. This amounts to abuse of process. I therefore strike out the applications/ appeals in both Makueni HCRA No. 265/2017 and 40/2018 and order the files closed.

5. The said **Jackson Mwanzia Musembi** is at liberty to move the court in any other appropriate manner.

6. Copies of this ruling should be filed in the following files:

Makueni HCRA No. 265/2017

Makueni HCRA No. 40/2018

Makindu SPMCRC No. 237/2012 for record purposes.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 22ND DAY OF MAY 2019, IN OPEN COURT AT MAKUENI.

H. I. ONG'UDI

JUDGE